Acta Sanctae Sedis

Acts of the Holy See

Holy See; Vatican

An English translation of the Latin edition
Rome: Typis Polyglottis Vaticanis, Vol. 11 (1878)

Note on this translation. This English text was produced by a machine-assisted translation pipeline from an OCR transcription of the source Latin edition. The draft translation was made by a specialised translation model, assisted by a dedicated ecclesiastical-Latin knowledge base which supplied Douay–Rheims wording for Scripture quotations and verified place-names and terminology. It is an unofficial reading aid and has *not* undergone formal scholarly revision; occasional errors will remain, particularly in the dense citation apparatus. Marginal references of the form [*Latin ed. p. N*] indicate the corresponding page of the source edition, for alignment with the original scans. Blank leaves and unreadable pages have been omitted.

[*Latin ed. p. 1*]

ACTS OF THE HOLY SEE, CONCISELY COMPILED AND ILLUSTRATED BY THE EFFORT AND CARE OF JOSEPH PENNACCHI AND VICTOR PIZZESI, OR: Acts, legal and more solemn, emanating directly from the Supreme Roman Pontiff; acts among those which can be made public by law, whether they are Decrees, or Instructions, or Responses, and other similar matters; especially, expositions and resolutions of cases from various Sacred Congregations of the Most Eminent Cardinals, carefully compiled to contribute to the accurate understanding and observance of ecclesiastical law: and finally, other legal matters, by which those things which may present difficulty in the aforementioned acts are suitably explained, or which further contribute to the knowledge of existing law: for the benefit of those who diligently study the laws of the Church, and who labor diligently in the governance of the Christian flock, or in cultivating the vineyard of the Lord. Volume XI, ROME, FROM THE VATICAN POLYGLOT PRINTING PRESS, MCMXVI. Reprinted with the permission of the Libreria Editrice Vaticana. JOHNSON REPRINT CORPORATION, 111 Fifth Avenue, New York, N. Y. 10003. JOHNSON REPRINT COMPANY LTD., Berkeley Square House, London, W. 1.

[*Latin ed. p. 4*]

THE RIGHT OF PROPERTY IS DEFENDED. First reprinting, 1968, Johnson Reprint Corporation. Printed in the United States of America.

[*Latin ed. p. 5*]

By the Divine Providence of Our Lord God, Pope Leo XIII, through Apostolic Letters, restores the Episcopal Hierarchy in Scotland, to the eternal memory of all. From the highest summit of the Apostolate, to which, without any merit of our own, but by the divine goodness so arranging, We have recently been raised, Our predecessors, the Roman Pontiffs, have never ceased to contemplate all parts of the Lord's vineyard, as if from the peak of a mountain, so that they might discern what would best serve the condition, dignity, and strengthening of all the Churches, and accordingly, as far as it was given to them from above, they have been most eager to establish new Episcopal sees wherever new peoples are found, and to restore to life those which have perished through the ravages of time. For since the Holy Spirit has placed bishops to govern the Church of God, wherever, in any region, the state of the most holy religion is such that an ordinary Episcopal government can be established or restored, it is fitting to confer upon it those benefits which naturally flow from such a divinely established order. Therefore, Our Predecessor, of blessed memory, Pius IX, whom We lament having been taken from us only a few days ago, since it had become apparent that, shortly before, the missions in the noble and flourishing kingdom of England had progressed so much that the form of ecclesiastical

Translated by churchlatin.ai, a product of Boyne Archives

government could be restored in it in the same way as it exists among other Catholic peoples, He took care to grant to the English bishops the Apostolic Letters, dated Kal. October, in the year of the Incarnation of Our Lord, one thousand eight hundred and fifty-five, the beginning of which is for the Universal Church. And since, not long afterward, He foresaw that the illustrious regions of Holland and Brabant could also enjoy the same salutary dispositions, He was not slow to restore the Episcopal Hierarchy there as well, which He did through other Apostolic Letters, given on the ninth day of March, in the year one thousand eight hundred and fifty-six.

[*Latin ed. p. 6*]

6. Apostolic Letters were issued, and the work began from that day. It is clear that these were undertaken with wise foresight, since, under the auspices of divine grace, the outcome fully corresponded to the expectations of this Holy See; for the benefit that the Catholic Church has received from the restored Episcopal Hierarchy in both places is known and has been demonstrated to all. However, the most pious Pontiff was grieved that Scotland, too, had not yet been able to share in the same good fortune. This sorrow in His paternal heart was increased by the knowledge of the great progress that the Catholic Church had once made in Scotland. Indeed, anyone even slightly versed in ecclesiastical history knows that the light of the Gospel shone early upon the Scots; for, although we pass over in silence what tradition recounts about earlier Apostolic missions to that kingdom, it is narrated that St. Ninian lived in the late fourth century, who, as the Venerable Bede testifies, was instructed in the faith and the mysteries of truth in Rome, and in the fifth century, St. Palladius, a Deacon of the Roman Church, adorned with sacred vestments, preached the faith of Christ there; and also St. Columba of Iona, who came there in the sixth century, built a monastery, from which many others arose. And although historical documents are scarce concerning the ecclesiastical state of Scotland from the middle of the eighth century to the eleventh, it is nevertheless known that there were several Bishops there, although some without certain sees. After Malcolm III came to the throne in 1057, with the encouragement of his Holy Spouse Margaret, the Christian religion, which had suffered considerable damage, either due to incursions by foreign peoples or due to various political changes, began to be restored and strengthened; and the remains of sacred buildings, monasteries, and other religious monuments that still exist today provide a splendid testimony to the piety of the ancient Scots. But, to follow closely what is more relevant to our matter, it is clear that in the fifteenth century, the number of Episcopal sees had already increased to thirteen, namely St. Andrews, Glasgow, Dunkeld, Aberdeen, as well as Moray, Brechin, Dumblane, Ross, and Katan, Galloway, and Lismore and Soay, or IlhÃ©us, and Orkney; all of which were immediately subject to this Apostolic See. It is also known, and the Scots are rightly proud

Translated by churchlatin.ai, a product of Boyne Archives

of it, that the Roman Pontiffs, taking up the kingdom of Scotland under their special protection, have always pursued these churches with singular benevolence; therefore, while they governed the Metropolitans of Scotland, they have not infrequently decreed that the privileges and immunities of these churches, already granted for a long time by the Church of Rome, their Mother and Mistress, should be fully preserved, so that, as was established by Honorius III, the Church of Scotland was subject to the Apostolic See, like a special daughter, without any intermediary. Moreover, before Scotland lacked a Metropolitan, Sixtus IV, considering the expenses and difficulties that the Scots had to endure,

[*Latin ed. p. 7*]

Apostolic Letters, 7 in number, were addressed to the Metropolitan, on the sixteenth day before the Kalends of September, in the year one thousand four hundred and seventy-two. The triumphant and eternal Pastor, the See of St. Andrew, which, both by its ancient foundation and by the veneration accorded to the patron of the Apostles' Kingdom, had easily obtained a prominent position, established itself as the Metropolitan and Archdiocesan seat for the entire Kingdom, subjecting the other sees to it as suffragan sees. This was likewise done with the See of Glasgow in the year 1591, which, separated from the ecclesiastical Province of St. Andrew, was raised to the dignity of a Metropolitan by Innocent VIII, and had its own suffragan sees, as mentioned above. Thus, the Church of the Scots flourished; however, with the outbreak of heresy in the sixteenth century, it was tragically brought to the brink of ruin; yet, the Scots never lacked the devoted care, solicitude, and providence of the Supreme Pontiffs, our Predecessors, so that they might persevere strongly in the Faith, as is clearly evident from numerous documents. For, perceiving the widespread storm raging, moved by compassion for that people, they tirelessly labored, through repeated missions from various religious orders, through Apostolic Legations, and through all kinds of assistance, to help the collapsing religion. Their efforts in this stronghold of the Catholic world included the establishment of a special college, selected from among the young people of Scotland, besides the Urbanian College, where they could be imbued with sacred disciplines and initiated into the priesthood, so that they could then exercise the sacred ministry in their homeland and provide spiritual aid to their people. And since that beloved flock of the Lord had been widowed of its pastors, Pope Gregory XV, as soon as it was possible, sent William, Bishop of Chalcedon, ordained and endowed with ample faculties, including those proper to Ordinaries, to both England and Scotland, so that he might assume the pastoral care of those scattered sheep, as can be seen in the Apostolic Letters beginning. The Roman Church, on the tenth day before the Kalends of April, in the year one thousand six hundred and twenty-three, granted Francisco Barberini, S.R.E. Cardinal, Protector of the

Translated by churchlatin.ai, a product of Boyne Archives

English and Scots, a large amount of resources, as evidenced by letters among the most important in the Brief issued on the eighteenth day of May, in the year 1633. Other letters of the same Pontiff are also relevant, such as those written to the Queen of France on the twelfth day of February, in the year 1633, in order to commend her piety and the Church, which was weakened by poverty. However, in order to better assist the spiritual governance of the Scots, Pope Innocent XI appointed Thomas Nicholson, Bishop in the title of Peristachium, as his Apostolic Vicar in 1694, entrusting him with the care of the entire kingdom and its adjacent islands. And not long after, when only one Apostolic Vicar was devoted to cultivating the Lord's vineyard...

[*Latin ed. p. 8*]

The Apostolic Letters would no longer suffice; Benedict XIII hastened to appoint a companion to the aforementioned Bishop, which could fortunately be carried out in the year 1727. Thus, the entire kingdom of Scotland was divided into two Apostolic Vicariates, one encompassing the lower, and the other the upper part. But this division, which had seemed sufficient for governing the Catholics, as they were at that time, could no longer be suitable as their number increased daily; therefore, this Apostolic See recognized the need to provide a new support for the protection and expansion of Religion in Scotland through the institution of a third Vicariate. For this reason, the Most Blessed Pope Leo XII, through Apostolic Letters delivered on the Kalends of February in the year 1827, decreed that Scotland be divided into three districts, or Apostolic Vicariates: the Eastern, the Western, and the Northern. No one is ignorant of the abundant fruits that the Catholic Church has gathered there through the zeal of new prelates, and the efforts of the Congregation for the Propagation of the Faith; from which it is evident that this Holy See has never abandoned, in its solicitude for all churches, the task of restoring the people of Scotland from their ancient misfortunes and of recreating them. But indeed, the Most Holy Pope Pius X had it deeply at heart that the illustrious Church of Scotland should again be brought to its former splendor and form, for the examples of his distinguished predecessors urged him, and they seemed to have paved the way for him to undertake such a work. And indeed, considering on the one hand the entire state of the Catholic Religion in Scotland, and the increasing number of the faithful, of sacred ministers, of churches, of missions, of religious houses, and of other similar institutions, and also the abundance of temporal resources, and on the other hand, observing that whatever had been an impediment to the restoration of the ordinary governance of bishops among the Scots was being removed daily through the freedom granted to Catholics by the esteemed British Government, this Pope easily convinced himself that the restoration of the Episcopal Hierarchy should not be postponed to another time. Meanwhile, the Apostolic Vicars them-

Translated by churchlatin.ai, a product of Boyne Archives

selves, and many men of noble birth and virtue, both from the clergy and the laity, earnestly urged Him not to delay in fulfilling their wishes in this matter. These supplications were again presented to Him when certain members of any Order in those regions, led by the Venerable Father John Strain, Bishop of Abila in the lands of the infidels and Apostolic Vicar of the Eastern District, arrived here to congratulate Him on the completion of the fiftieth year since his Episcopal consecration. Under these circumstances, the esteemed Pope addressed this matter, as his gravity demanded, to the Most Reverend Fathers, Cardinals of the Holy Roman Church, Prefects of the Congregation for the Propagation of the Faith, and in every way...

[*Latin ed. p. 9*]

Nine Apostolic Letters He had entrusted to us for consideration; and the opinions expressed in them had confirmed Him all the more in the course He had taken. But as He Himself rejoiced in having reached the long-desired work to be accomplished, He was summoned by the Just Judge to receive the crown of righteousness. What Our Predecessor had not been able to complete by death, the God, abundant in mercy and glorious in all His works, has generously granted to us, so that We might, as We undertook the Supreme Pontificate, which We accepted with such trepidation in these calamitous times, look forward to it with a certain auspicious omen. Therefore, without delay, having fully learned of the entire matter, which had been decreed by the Most Reverend Pope Pius IX, We deemed it Our duty to proceed with its execution. Raising our eyes to the Father of lights, from whom all good things come, and all perfect gifts, We invoked the protection of divine grace, and We also prayed for the help of the most Blessed Virgin Mary, conceived without sin, of St. Joseph, her Spouse, and Patron of the entire Church, of the Blessed Apostles Peter and Paul, of St. Andrew, and of other saints, whom the Scots venerate as protectors, that they might help us with their intercession before God to successfully carry out this same undertaking. With these things as a preface, and with certain knowledge, and with the Apostolic authority with which We are endowed in the entire Church, for the greater glory of Almighty God and for the exaltation of the Catholic Faith, We establish and decree that in the Kingdom of Scotland, according to the prescriptions of the canonical laws, the Hierarchy of Ordinary Bishops shall be revived, who shall be assigned to Sees which We establish by this Our Constitution, and which We constitute as an ecclesiastical province. Furthermore, We intend to establish six Sees at the present time, and We will that they be considered as established from this moment, namely, St. Andrew's with the attached title of Edinburgh, Glasgow, Aberdeen, Dunkeld, Galloway (Candidae Casae), and Argyll (Ergadiensem) and the Islands. Remembering the illustrious monuments of the ancient Church of St. Andrew, and taking into account the present Prince of that Kingdom, and other considerations, We cannot

Translated by churchlatin.ai, a product of Boyne Archives

but raise that celebrated See, as if awakening it from the tomb, to the rank of Metropolitan or Archbishopric, with the title of Edinburgh, as it was formerly adorned by Our predecessor, Pope Sixtus IV, and We assign to it four suffragan Sees from the aforementioned Sees, namely, Aberdeen, Dunkeld, Galloway (Candidae Casae), and Argyll (Ergadiensem) and the Islands, as We hereby assign, add, and attribute, by the tenor of the present document, by Our Apostolic authority. As for the See of Glasgow, considering the antiquity, size, and nobility of that city, and especially taking into account the flourishing state of religion in it, and the archiepiscopal privileges conferred upon it by Innocent VIII, We deemed it entirely fitting to grant to its Sacred Prelate the title of Archbishop and the insignia, as We likewise grant, by the tenor of the present document.

[*Latin ed. p. 10*]

We grant Apostolic Letters, yet, until otherwise defined by Us or Our Successors, these confer no specific rights beyond the privilege of name and honor, pertaining to a true Archbishop and Metropolitan. We will and command that the Archbishop of Glasgow, as long as he remains without suffragans, participate in the Provincial Synod of Scotland together with the others. In the aforementioned Archiepiscopal or Metropolitan See of St. Andrew and Edinburgh, are included the counties of Edinburgh, Linlithgow, Haddington, Berwick, Selkirk, Peebles, Roxburgh, and the southern part of Fife, which lies to the right of the River Eden; also the county of Stirling, except for the territories of Baldernock and the eastern part of Kilpatrick. In the Archdiocese of Glasgow are included the counties of Lanark, Renfrew, and the territory of Baildenock and the eastern part of Kilpatrick, located in the county of Stirling, the northern county of Ayr, which is separated from its southern region by the stream Lugton flowing into the River Garnock, and also the islands of Cumbrae Major and Minor. In the Diocese of Aberdeen are included the counties of Aberdeen, Kincardine, Banff, Elgin, or Moray, Nairn, Ross (except for Leochel in the shire of Inverness), Cromarty, Sutherland, Caithness, and the islands of Orkney and Shetland; finally, that part of the county of Inverness which is located to the north of the straight line drawn from the northern extremity of Loch Luing to the eastern boundaries of the same county of Inverness, where the counties of Aberdeen and Banff meet. In the Diocese of Dunkeld are included the counties of Perth, Forfar, Clackmannan, Kinross, and the northern part of Fife, which lies to the left of the River Eden, and also those parts of the county of Stirling which are separated and are surrounded by the counties of Perth and Clackmannan. The Diocese of Galloway includes the counties of Dumfries, Kirkcudbright, Wigtown, and the part of Ayr which extends to the left of the stream Lugton flowing into the River Garnock to the south. Finally, the Diocese of Argyll and the Isles includes the counties of Argyll, the islands of Bute and Arran, Skye, and the southern part of the county

Translated by churchlatin.ai, a product of Boyne Archives

of Inverness, which extends from Loch Luing to the eastern boundaries of the same county of Inverness, according to the straight line described above. Thus, in the Kingdom of Scotland, apart from the Archiepiscopal dignity of Glasgow, there will be only one ecclesiastical province, consisting of one Archbishop or Metropolitan and four suffragan Bishops. We do not doubt that the new prelates will follow in the footsteps of their predecessors, who, through their own virtue, illuminated the ancient Church of Scotland.

[*Latin ed. p. 11*]

Let these Apostolic Letters be a guarantee that all efforts will be made to ensure that the name of the Catholic Religion flourishes more brightly in their regions, and that the progress of souls and the increase of divine worship are promoted in the best possible way. Therefore, We declare and reserve for Ourselves and Our Successors in the Apostolic See, that these Dioceses may be divided into others, where it will be necessary, and that their number may be increased, and their boundaries changed, so that whatever else may be deemed expedient by Our Lord for the propagation of the orthodox faith may be freely accomplished therein. Moreover, We desire and command that the Prelates of these same Churches never fail to transmit to Our Congregation for the Propagation of the Faith, which has hitherto taken particular care of these regions, a report concerning the condition of their sees and the care of their flocks, and that they inform the same Congregation of all that they deem necessary or useful for the fulfillment of their pastoral duties and for the growth of their Churches. They should remember that this report must be presented, as well as the visit to the threshold of the Holy Apostles, every fourth year, as prescribed in the aforementioned decree of Pope Sixtus V, dated January 13th of the year 1585. In all other matters pertaining to pastoral office, the aforementioned Archbishops and Bishops enjoy all the rights and faculties that other Catholic prelates of other nations enjoy, and can enjoy, by virtue of the common Canon Law and the Apostolic Constitutions, and are bound by the same obligations as other Archbishops and Bishops are bound by, by virtue of the same common and general discipline of the Catholic Church. Therefore, whatever has been in force from ancient times in the Churches of Scotland, or in subsequent missionary endeavors, by virtue of special constitutions, or particular privileges or customs, will henceforth produce no right or obligation under the changed circumstances. And in order that no doubt may arise concerning this matter in the future, We hereby remove from all such special statutes, ordinances, privileges, and customs of any kind, which have been established and are in force from the most ancient and even unmemorable times, all power to bind and to confer rights, by the fullness of Our Apostolic authority. Therefore, it will be incumbent upon the Prelates of Scotland to determine what pertains to the execution of common law, and what has been permitted to the authority of Bishops

Translated by churchlatin.ai, a product of Boyne Archives

by the general discipline of the Church itself. Let them be certain, however, that We will readily be at their service with Our Apostolic authority, and that We will offer them all Our help in all matters that are intended to promote the glory of the divine name and to foster the spiritual well-being of souls. This is Our most sincere desire for the beloved...

[*Latin ed. p. 12*]

12. We desire, and declare, that Apostolic Letters from the Holy See be presented to the Daughter, the Church of Scotland, so that, Antistites [bishops], having been invested with the name and rights of Ordinary Bishops, should not in any way be deprived of those advantages and greater faculties which they enjoyed in the past, together with the title of Our Vicars and of the Apostolic See. For it is not right that detriment should come to them, with regard to those matters which have been decreed by Us, with the greater good of the sacred things among them, according to the will of the Catholics of Scotland. And, since the condition of Scotland is such that temporal support is lacking to Christ's Ministers, and to the various needs of each Church, we are firmly hopeful that Our beloved sons, the faithful, to whose most urgent requests for the restoration of the Episcopal Hierarchy We have readily given heed, will continue to assist the Pastors whom We appoint to them, with their alms and offerings, so that they may be able to contribute to the restoration of Episcopal sees, to the splendor of temples, and to the support of the poor clergy, and to other needs of the Church. But now We turn our most humble prayers to Him in whom it pleased God the Father, in the fullness of time, to restore all things, that He who began the good work may perfect it, confirm it, and establish it, and that He may add the light and strength of heavenly grace to all those to whom it pertains to carry out the matters decreed by Us, so that the Episcopal Hierarchy, restored by Us in the Kingdom of Scotland, may be entirely beneficial to the Catholic Religion. And for this purpose also We invoke the intercession of those who are dear to Our Lord Jesus Christ, namely, the Most Holy Mother of God, St. Joseph, the putative father of Him, the Blessed Apostles Peter and Paul, and also St. Andrew, whom Scotland holds in special veneration, and other Saints, and especially the Blessed Margaret, Queen of Scots, and the ornament and pillar of that Kingdom, that they may favor the restoration of that Church. Finally, We decree that these Our Letters may never, at any time, be noted or impugned by any fault of deception or suppression, or by any other defect of Our intention, and that they shall always be valid and firm, and that their effects shall be maintained in all respects and inviolably observed. Notwithstanding any Apostolic, and any general or special sanctions issued in synodal, provincial, and universal Councils, and also the ancient sees and missions, and the Apostolic Vicariates established there afterwards, and the rights or privileges of any churches and pious places, strengthened by oath, by Apostolic confirmation, or by

Translated by churchlatin.ai, a product of Boyne Archives

any other means, and all other contrary things whatsoever, for although a special mention should be made for their derogation, or any other form whatsoever should be observed, inasmuch as the aforementioned stand in the way, We expressly derogate from all of these. We also declare void and of no effect, if anyone, by any authority, should—

[*Latin ed. p. 13*]

Apostolic Letters: We decree that, whether intentionally or unintentionally, anyone should attempt to challenge [the validity of] these. We wish that these Letters, even when printed, and signed by the hand of a public Notary, and sealed with the seal of a man of proven integrity in ecclesiastical office, should have the same force and effect as if they were presented with this very diploma, clearly demonstrating Our will. Therefore, it is forbidden to any person whatsoever to infringe upon this page of Our Erection, Constitution, Restitution, Institution, Designation, Addition, Attribution, Decree, Mandate, and Will, or to dare to contradict it with reckless audacity. If anyone should presume to attempt this, let them know that they will incur the wrath of Almighty God and of the Blessed Apostles Peter and Paul. Given at Rome, near St. Peter's, in the year of the Incarnation of Our Lord one thousand eight hundred and seventy-eight, on the fourth day before the Ides of March, in the first year of Our Pontificate. C. Card. SACCONI, Pro-Datary. F. Card. ASQUINIUS. EXAMINED: FROM THE CURIA 1. FROM L'AQUILA AND THE VICARIATES. L. S. I. CUGNONIUS. Registrar in the Secretariat of Briefs. Concerning the restoration of the Episcopal Hierarchy in Scotland: Various considerations and reasons. ECCLESIASTICAL GOVERNMENT BEFORE THE REFORMATION. Although ancient tradition testifies that certain individuals, Marchus and Dionysius, were sent by St. Victor to convert Donald, the King of the Scots, to the Christian religion, explicit mention is made of St. Ninian, who, having been raised to the Episcopal dignity by Pope Siricius, preached the faith to the people of Southern Scotland. While he was in the province of Gallovidia...

1. For the sake of easier understanding, we add some historical notes and certain points of reasoning, by which the Holy See restored the ecclesiastical hierarchy in Scotland; for which, the aforementioned Constitution "Ex supremo" was issued. Ann. 193-203. 3 Ann. 394. 2

[*Latin ed. p. 14*]

14. Concerning the restoration of the Episcopal Hierarchy in Scotia, the Church was revived from its foundations, as was the case with St. Martin. Like the Apostle, the Scots also have St. Palladius, a deacon of the Roman Church; who, having been raised to the episcopal dignity, came to Scotia in the year 431. The noble St. Columba of Aberdeen is also esteemed in the annals of the Scots, who came to Scotia in the year 565; and there he founded a monastery from which many other things originated. However,

Translated by churchlatin.ai, a product of Boyne Archives

from the middle of the eighth century until the time of St. Margaret, who married Malcolm III, the history of this region and the Church therein fades into obscurity. Nevertheless, it is known that through the counsel of this holy woman, the king Malcolm established resident bishops and chapters there, restoring bishops from monasteries and religious chapters. From the diligent care of the Roman Pontiffs and from the remains of churches that still remain, it can be gathered that the Catholic Religion early permeated Scotia.

I. SEATS OF BISHOPS EXISTING BEFORE THE REFORMATION.

I. St. Andrews, which is not far from Edinburgh: and which was the capital of the Scots while Malcolm III reigned. There, the relics of St. Andrew, which are said to have been brought from Achaia, are held in the greatest veneration. The cathedral of that city is counted among the most notable monuments of Gothic architecture. In the fourth century, the See of St. Andrews was raised to the dignity of a metropolitan and primatial see; and its last titular bishop, John Hamilton, was crowned with the palm of martyrdom.

II. Galloway. This was founded by St. Ninian, and its successors, the bishops, are recorded by Bede, and the series ended in the year 1558.

III. Aberdeen. This was founded by Malcolm III; and the last bishop of this see, William Gordon, died in the year 1577.

IV. Dunkeld. The ancient origin of this is not known. However, it is known that it was restored by King David I, son of St. Margaret. Through the actions and malice of the Protestants, its cathedral church was destroyed in the year 1559, and its last bishop, Robert Cricton, was expelled by the heretics.

V. Glasgow. This was later raised to the honor of an archbishopric; this city is rightly included among the most important cities of Scotia. Its origin or growth should be attributed to St. Kentigern; who, having received episcopal consecration, governed this diocese from the beginning of the sixth century. The highest of its archbishops, having been exiled to Gallia, migrated to the heavens in the year 1603.

VI. Moray. This was established by Malcolm III, and vestiges of its cathedral church are still visible. Patrick Hepburn, the last of its pastors, passed away in the year 1573.

VII. Caithness. This was founded by the same Malcolm III in the eleventh century. Its last bishop, Andrew Stewart, departed this life in the year 1542.

* Anno 1093.

[*Latin ed. p. 15*]

Of the Episcopal Hierarchy to be Restored in Scotia, August 15th.

Translated by churchlatin.ai, a product of Boyne Archives

RossENsis. It is believed to have been established in the year 1120, or 1130; although some maintain that King David did not establish a new See, but rather restored an ancient one that had existed since the 7th century to its former glory. John Lesley was the last Bishop of Bruxellis, who fell asleep in the Lord in 1596. October 1st. BRECHINENSIS. This was a monastic See; and it was established as a Diocese by David I in the year 1150, with a Chapter of religious men from the monastery of the same name. The series of its Ordinaries ends with John Sinclar, who ascended to Heaven in the year 1566. October. DUMBLANENSIS. This See was established in an ancient monastery; which, after being destroyed, had its Episcopal See revived by David I. Some believe that such a See was restored by the Earl of Stratherne in the year 1200. William Chisholm II was the last Bishop of this Diocese, who breathed his last in Gallia. October. LiSMORENsis OR ERGADIENSIS. According to some writers, this See was established by Pope Clement III; according to others, by Alexander III, in the year 1200. James Hamilton was the last Bishop of this Diocese, who turned to the Protestants. October. SopoRENsis OR INSULANUS. The Bishops of Sodura were also called the Bishops of the Isles; the last of whom was Roderick Maclene, elected in the year 1550. XIII. ORKADENSIS. The origin of this Diocese is attributed to St. Servanus, a disciple of St. Palladius. The last Bishop of this See was Adam Bothvell, elected in the year 1559, who, having adhered to heresy, passed away while still alive in the year 1559. Although, before the era of the Protestants, Scotia possessed eleven Bishops and two Archbishops, there was no Metropolitan among them, and therefore all were immediately subject to the Holy Roman See. And although the Bishops of Angliae several times attempted to subject the Bishops of Scotia to themselves, it was a futile endeavor. For Alexander III, in a letter to the Bishop of St. Andrews in the year 1170, confirmed this freedom of the Church of Scotia. Pope Honorius III placed the kingdom of Scotia under the direct protection of the Holy See in the year 1218. Pope Eugenius IV, writing to King James of Scotia, stated that he himself governed as Metropolitan of Scotia. Pope Paul II asserted the freedom of the prelates of Scotia from the Metropolitan of Angliae, since a question had arisen between them. Although the Church of Scotia truly lacked a Primate and Metropolitan until the 15th century, the Bishop of St. Andrews was nevertheless called "Thomassin," as is written in "Vetus et nova Ecclesiae disciplina," p. 1, book 1, chapter 45, paragraph 11: "And it is not surprising that Scotia long lacked a Metropolitan, since it is known that its Bishops did not have fixed seats. The episcopal duties of the Scots, wherever they might be, were performed without distinction, until the time of Malcolm III" (Campdeni Britannia, 683). "The same fate and condition was for all the Churches, while they were lurking among their

Translated by churchlatin.ai, a product of Boyne Archives

own people."

[*Latin ed. p. 16*]

16 Concerning the Restoration of the Episcopal Hierarchy in Scotland. The First Bishop, the Metropolitan Bishop, the Bishop of the Scots. This Bishop, who was also a legate, enjoyed the privilege of crowning the kings of Scotland. In order to thwart all the efforts of the bishops of England, Pope Sixtus IV, at the request of the King of Scotland, issued a Bull, beginning with the words "Triumphans Pastor Aeternus" on August 17, 1472. In it, this Supreme Pontiff, considering the expenses and hardships endured by the Scots in traveling to the Metropolis of Rome, established the See of St. Andrew as a Metropolitan See and an Archbishopric for the entire kingdom. When certain questions arose between the Archbishop of St. Andrew and Robert, the Bishop of Glasgow, Pope Innocent VIII, according to the jurisdiction of the Primacy of St. Andrew, exempted Glasgow and established that it should be directly subject to the Holy See. The same Pontiff, by a Bull dated January 9, 1491, separated the churches of Glasgow, Dunkeld, and Dumblane, as well as Candidae Casae and Lismore, from the province of St. Andrew, and erected the church of Glasgow as a Metropolitan See, with archiepiscopal dignity, jurisdiction, and superiority, establishing four other churches as suffragan sees. THE BEGINNING OF HERESY IN SCOTLAND. Under the reign of James V, the father of the impious Mary Stuart, Patrick Hamilton began to spread heresy in Scotland, which, however, was suppressed by the zeal and virtue of King James and Cardinal David Beaton, the Archbishop of St. Andrew. After the death of James V and the assassination of the Cardinal, error prevailed, bolstered by deceptions and calumnies. James VI, still a boy, fell under the power of his mother's enemies; then, crossing over to England, he assumed the name of James I; under whose rule, Presbyterianism was declared the Religion of the State. CONCERNING MISSIONS IN SCOTLAND UP TO THE ERECTION OF VICARIATES. It seems superfluous to elaborate on the care and concern with which the Holy See worked to prevent the further decline of religion in the 16th century. It cannot be omitted that, in 1559, Pope Paul IV sent Nicholas Pellevé as an Apostolic Nuncio to Queen Mary Stuart, who was still residing in France, with the title and jurisdiction of Nuncio. This Nuncio, having gathered the prelates of the kingdom at Edinburgh, exerted all his efforts to ensure that they would strive to uphold the religion in Scotland. Apostolic Letters from Gregory XV to the Church of Rome, dated March 23, 1623, state that William, the Bishop of Calcedonia, was sent with ample faculties, for the purpose of protecting the Catholics of England and Scotland. Pope Urban VIII granted Cardinal Francisco Barberini extensive faculties to restore the Catholic faith in those kingdoms and to promote the well-being of the English and Scots, as can be gathered from the Brief of May 18, 1630. When persecution intensified, the same Pontiff, by a Brief

Translated by churchlatin.ai, a product of Boyne Archives

of February 12, 1633, commended the Catholics of Scotland to the Queen of France.

[*Latin ed. p. 17*]

Of the Episcopal Hierarchy to be Restored in Scotland. From the year 1622 until the year 1694, Apostolic Prefects presided over various missions in Scotland. From the middle of the sixteenth century until the year 1694, the Catholics of Scotland lacked any bishop. In that year, Innocent X first appointed Thomas Nicholson as an Apostolic Vicar, to whom the care of all of Scotland and the Islands was entrusted. Benedict XIII, in the year 1727, dividing the entire Kingdom into two Vicariates, assigned James Gordon to one district, and Alexander John Grant to the other.

ON THE MODERN ECCLESIASTICAL GOVERNMENT IN SCOTLAND. The two aforementioned Apostolic Vicariates bore great fruit; so that the number of those professing the Catholic faith reached 99,800 within the space of forty years. Therefore, urged by the Vicars, Leo XII, greatly delighted, on February 13, 1827, divided Scotland into three Vicariates; namely, he established a northern, an eastern, and a western Vicariate. Certain ecclesiastical and secular men, too attached to the previous division, opposed this arrangement. However, after considering the objections, the Sacred Congregation of Propaganda Fide sent letters to the Vicars, ordering them to implement the Bull *Quanta laetitia*. The opponents resisted, and the threefold division prospered; and this arrangement indeed produced many benefits. In the following year, 1829, when George IV had decreed the desired emancipation of the Catholics of Britain, the Apostolic Vicars gained greater freedom to promote the Religion in Scotland. And with the help of a substantial inheritance left by a pious testator, a great benefit was derived from the Seminary, from which always more abundant fruits have sprung forth for the benefit of the Religion. Other seminaries, and other churches, were built with the passage of time; and the Catholics of that region, who in the year 1777 were not yet 13,000, now number 360,000. The Apostolic Vicariates of Scotland, the eastern and the western, did not proceed so regularly due to certain internal discordances in those regions, from which the flock suffered damage. Therefore, the idea took root in the minds of all of restoring the ecclesiastical hierarchy in Scotland.

EFFORTS TO RESTORE THE HIERARCHY. From various parts of Scotland, supplications were occasionally sent to the Holy See, with the intention of immediately re-establishing the normal ecclesiastical order, in order to prevent many evils that were foreseen, and which would hinder the greatest progress of the religion of Christ. The Sacred Congregation of Propaganda Fide, regarding this matter, sought the opinion of Cardinal Wiseman, Archbishop of Westminster, and of the Apostolic Vicars. Cardinal Wiseman, following the prescribed procedure, responded: "I do not

Translated by churchlatin.ai, a product of Boyne Archives

believe that anyone can doubt the necessity of changing the ecclesiastical government of Scotland; and it would be more useful to increase the number of Episcopal Sees."

[*Latin ed. p. 18*]

18 Concerning the restoration of the Episcopal Hierarchy in Scotia, a certain number [of bishops] is needed. And indeed, if this were to be done, it would be prudent that, at the same time, Ordinary Bishops be appointed. The Apostolic Vicars of the East and North presented a contrary opinion. And therefore, the Holy Congregation for the Propagation of the Faith replied: "Nothing is to be changed." However, the condition of the Western Vicariate became increasingly sad; so that the Most Reverend Manning, Archbishop of Westminster, was sent there as Apostolic Visitator. The report of this Most Reverend man concluded thus: "The only remedy for the most serious evils of the present time, and for those of the future, is that Scotia be divided into dioceses, and that the ecclesiastical Hierarchy be established. And all Catholics of Scotia are certain of this." Therefore, the Sacred Congregation for the Propagation of the Faith, on January 27, 1868, to the question: "Can it be said that the opportune time has come, so that progress can be made towards restoring the ecclesiastical Hierarchy in Scotia?" replied: "Affirmatively, according to the manner to be explained below." At times, the Reverend Mr. Errington, elected Apostolic Vicar, reported that the time was not opportune for restoring the Hierarchy in Scotia, due to a law that was then proposed in Anglia concerning the titles of Episcopal Sees. The Council considered the matter, and the matter was still postponed. And the Reverend Mr. Eyre was granted an Apostolic Delegation for ordaining and managing ecclesiastical affairs in Scotia, and for converting rough paths into smooth ones, so that the Hierarchy might be restored more easily.

PROTESTANTISM IN SCOTIA. The history of Protestantism in Scotia can truly be called a history of variations; for it reaches 110 in number [of denominations]. Catholics constitute one-tenth of all the various denominations that are now found in that region; now the number of all inhabitants amounts to 3,600,000; of whom 360,000 profess the Catholic religion.

ON THE OPPORTUNITY OF RESTORING THE HIERARCHY. To the arguments used by the Most Reverend Archbishops Wiseman and Manning, and to the exhortations of many Catholics, it must be added that the restoration of the Hierarchy will be beneficial to the clergy, who would exercise greater authority in religious matters; to the Catholic people, who could be more suitably supported in the danger in which their faith is placed in contact with Protestants; and even to the Protestants themselves, who will be able to more easily recognize and follow the Catholic faith. Nor will the Protestants themselves present an obstacle; for whatever has

Translated by churchlatin.ai, a product of Boyne Archives

been done in opposition originated in the year 1850 from English Bishops, and not from the Scots, who have never opposed it, and who now would regard it with indifference; because the Presbyterians grant freedom to each conscience. Nor would the civil government object, because, by the force of the laws by which it is now governed, it could not prevent it.

[*Latin ed. p. 19*]

Concerning the Restoration of the Episcopal Hierarchy in Scotland: It is known to all in that place that the Holy See is considering the restoration of the ecclesiastical hierarchy throughout the entire Kingdom of England. However, public opinion seems to be indifferent to this matter, as evidenced by the newspapers that have spoken about it. There have been no Protestants so fanatical as to diligently strive to incite the people; but their efforts have been in vain. Indeed, the newspapers of that region have asserted that many Protestants would derive advantages from this event, as they would be able to more easily and suitably establish a new examination concerning Catholicism, thereby more reasonably rejecting it. And the first newspaper of England, called *The Times*, in refuting certain virulent letters sent to the Director against the restoration of the hierarchy, concluded: "For the Catholics of Scotland, that which is unique is being restored, namely, the only form of government in the Catholic Church; and religious freedom will be complete. And laws would be invoked in vain, for the Roman Pontiff can act in this matter as He pleases." The new hierarchy will create new converts among those who are already half Catholic; but nothing should be feared.

REGARDING TITLES TO BE GRANTED TO NEW EPISCOPAL SEATS. This question is linked to another that concerns the establishment of a See as a Metropolitan of the ecclesiastical province of the Scots. Since, however, the matter concerns the restoration, and not the establishment, of the ecclesiastical hierarchy in Scotland, the ancient titles could be conferred upon the new bishops. This would be in perfect agreement with the practice of the Holy See, which confers titles in parts of the infidels in order to preserve the memory of the ancient Churches, which, although lacking bishops, once had them. Although, indeed, the ancient titles are generally to be preferred, the circumstances of place and time might also require that new ones be adopted, always for the good of souls. Therefore, among the six dioceses that the Apostolic Vicars propose, only three retain the ancient titles. The difficulty has also been overcome concerning whether one of these dioceses could include one of the ancient sees from which it takes its name, even though the bishop would be forced to live in another city, different from the ancient See.

CONCERNING THE ESTABLISHMENT OF A METROPOLIS FOR THE ECCLESIASTICAL PROVINCE OF SCOTLAND. For some time, it has been debated whether a metropolitan see should be established in the city of

Translated by churchlatin.ai, a product of Boyne Archives

Glasgow, or in Edinburgh. One held that Edinburgh should be preferred, because it could include the ancient See of St. Andrew within its territorial limits, and in which the bishop would have his residence. Another, on the contrary, maintained that the city of Glasgow should be preferred, because that city surpasses all the cities of Scotland in both the number of inhabitants, which reaches 500,000, and in its privileges. In order to reconcile the opinions of both parties, it was decided that, as far as possible, the dignity of Archbishop should be conferred upon the bishop of Edinburgh.

[*Latin ed. p. 20*]

20. Concerning the restoration of the Episcopal Hierarchy in Scotia, the two bishops should elevate their Sees, distributing the suffragan churches between the two dioceses; or, assigning to the Archbishop of St. Andrew four other dioceses. "This is not new," says Benedict XIV concerning Synods. "For someone, by privilege, may be called 'Archbishop and Metropolitan,' yet, apart from the prerogative of name and honor, he obtains no true right of an Archbishop and Metropolitan." As for others, such was the case with the Bishop of Jerusalem, to whom the Fathers of Nicaea, in deference to the See, granted a certain metropolitan right, but only for the sake of honor, since he remained subject to the Bishop of Caesarea; the Fathers of Nicaea wished that he should be superior to the other bishops of the Province. Therefore, Lambertini concludes: "Following these ancient examples, the Roman Pontiffs have granted the title of Archbishop and its insignia to some bishops, without, however, granting them any true rights of an Archbishop; indeed, they have sometimes removed such honorary Archbishops from the jurisdiction of their Metropolitan." It would seem fitting to impose the burden of participating in the Provincial Synod upon an honorary Archbishop who is chosen without suffragans. From the Council of Trent, Session 24, de reform., chapter II, it is stated that bishops immediately subject to the Holy See are obliged to elect a Metropolitan, and to participate with others in his Provincial Synod. However, a particular Congregation, reported by Benedict XIV, De Syn., book 1, chapter 13, number 13, 15, resolves: Archbishops who do not have suffragans are not obliged to elect a Metropolitan for the purpose of attending his provincial council.

ON THE ELECTION OF BISHOPS. The reasons for electing bishops in provinces subject to the Sacred Congregation for Propaganda Fide are limited to three. The first reason is that which was established for England and Holland, in which the Chapters have a part; the second is for Ireland; in which the parish priests also participate; the third is for the United States and for Nova Scotia; in which the neighboring prelates may be present. The first reason, for England, received approval with the Instruction concerning those to be recommended for the episcopate of April 21, 1852, with subsequent accidental modifications. This reason, without the aforementioned

Translated by churchlatin.ai, a product of Boyne Archives

modifications, was approved for Holland with the Instruction of July 18, 1858. According to this Instruction, the canons of the vacant See form a list of three candidates by secret ballot; which they are obliged to send to the Archbishop, or to the senior suffragan; who, after receiving the opinions regarding the recommended persons, sends a list of three to the Holy See, along with his votes. The second reason, for Ireland, was published by decree of October 17, 1829. In it, it is ordered that the parish priests, if present, should recommend three candidates, among whom the largest number of votes is gathered. And after the process is completed in writing in two copies, the Secretary of the Diocese sends one copy to the Sacred Congregation for Propaganda Fide.

[*Latin ed. p. 21*]

Concerning the Episcopal Hierarchy to be Restored in Scotia, 21. Another [bishop] is sent to the Metropolitan, or to the senior of the Suffragans. This senior, in turn, sends [the nominee] to the Holy See, along with his vote. The third method was first established for the United States of America, and then applied to the Province of Canada and Australia. For this reason, the bishops must, every three years, transmit to the Holy Congregation and to the Metropolitan the names of those who seem worthy of Episcopal honor. When a See becomes vacant, all the bishops of the province must be gathered together to examine the qualities of the candidates and to inform the Holy See of their findings. The method for electing bishops in the Province of Halifax, Novae Scotia, stipulates that when a See becomes vacant, the Archbishop, through circular letters, must call the other bishops of the province to convene. All of them, gathered together, must recommend three [candidates] to the Holy See, or make a "ternum" [a list of three candidates]. When an Archdiocese becomes vacant, then the senior bishop convenes all the others. These methods by which bishops are chosen do not, in any way, diminish the freedom of the Holy See. For whenever the Holy See has approved some method from among those mentioned, it has added: that nothing should be found that indicates an election, nomination, or request, but only a proper commendation, so that even from the form of the letter, it should be clear that no obligation is imposed on the Holy See to choose anyone from those recommended; the freedom of the Apostolic See in choosing bishops must remain intact; the commendations, indeed, offer only light and knowledge to the Holy Congregation, but not an obligation.

DE CHAPTERS OF CANONS AND OF PARISHES. It is fitting that the restored ecclesiastical hierarchy, with the prescribed observance of common law, should provide, as the Holy See has always done, for the restoration of the Chapters of Canons and the Parishes within those dioceses. Having considered all of these things, the Eminences, Cardinals entrusted with the Propagation of the Faith, confirmed to the Most Holy Father the counsel undertaken concerning the restoration of the hierarchy, affirming

Translated by churchlatin.ai, a product of Boyne Archives

that the opportune time had come to carry it out. Therefore, the Roman Pontiff, through the Apostolic Letters mentioned above, established only six of the thirteen Sees that existed before the Reformation, namely, St. Andrew's with Edinburgh, Glasgow, Aberdeen, Dunkeld, Galloway (Candidae Casae), and Argyll (Ergadiensem) and the Islands. The Most Holy Father raised the See of St. Andrew's to the dignity of the Metropolitanate or Archbishopric, assigning to it four Suffragan Churches. He conferred the title and prerogatives of Archbishop upon the Ordinary of Glasgow, but only for the sake of honor; and he ordered that he should convene with the others in the Provincial Synod of Scotland, until he remained without Suffragans. These Sees, as if raised from the grave, constitute one ecclesiastical province.

[*Latin ed. p. 22*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF TRENT, July 28, 1877. Summary of the case. Although its origin is shrouded in obscurity, within the Church of St. Vitus in the Diocese of [Minori], there exists a Benefice of the Sacristan, whose revenues were increased through the efforts and diligence of the priest, Mariano Tarisciotti, who was Rector at that time; to whom the Holy Congregation of the Council granted an indulgence, so that this benefice would perpetually remain subject to the right of patronage, both active and passive, of himself and his descendants from his own family, in alternation with the Bishop. In the year 1873, when the Archpriest of St. Vitus, seeing that he could not adequately serve the people entrusted to him, and having received a nomination from the patrons, informed the Ordinary that he would send a representative to the Archpriestal office, provided that the vacant benefice of the Sacristan be provided for; which he obtained. However, on June 25, 1873, after obtaining the canonical institution of this benefice, he did not resign the Archpriestal office. Then the Bishop offered to the same Archpriest another benefice, vacant in another parish, with the obligation of assisting the parish priest of that place, in order to provide a remedy. From this, the condition of the Archpriest became better, both because of the more abundant fruits, and because of the lesser duties. To make way for a new office in another parish, the Archpriest offered himself on August 6, 1874, after the Ordinary had repeatedly urged him to relinquish possession of the Benefice of the Sacristan; and this all the more because the patrons were demanding it. This, however, the Sacred Congregation of the Council declares null and void.

[*Latin ed. p. 23*]

The patrons of the Benefice presented twenty-three petitions, requesting that the son of Francis be appointed to the Benefice of Sacristan, who was one of those same patrons. A concise discussion. THE ARCHPRIEST'S DE-

Translated by churchlatin.ai, a product of Boyne Archives

FENSE. He vigorously argued that the Benefice of Sacristan is not incompatible, so that, having obtained another benefice, it should be relinquished. For two things must be present in a benefice for it to be considered incompatible, namely, that it requires personal residence and personal service. The benefice in question is clearly devoid of both of these characteristics, as can be easily deduced from the decree issued in the Visitation of S in the year 1764 by the Ordinary of that □□ time, which states: "There is in this Church a Benefice of 'Sacristan...' which does not require personal residence, so that 'the beneficiary can, by himself, or through another, perform the office of Sacristan.'" Furthermore, it can also be inferred from the duties inherent in the benefice that the holder of this benefice is not subject to the law of residence. Such duties include ringing the bells, serving at Masses, and performing all that is customary for those who serve in churches. But if this benefice were residential, the beneficiary would be obliged to personally perform these duties, since the benefice is considered and is [a position of] residence. However, it is clear to everyone how dissonant these duties are for an ecclesiastic; therefore, the holder of the benefice cannot be subject to the bonds of residence, and can fulfill these duties through another. Nor can it be said that this Sacristan must preside over the Sacristy; this would be a greater burden than is warranted by the foundation, and since this church is neither a cathedral nor a collegiate church, such a service is not required. Moreover, the necessary furnishings for the service of the church are provided to the person designated by the Beneficiary, and for this, he is remunerated. Furthermore, custom removes all doubt on this matter. No one is ignorant of the great force of custom.

[*Latin ed. p. 24*]

Benefits, both according to civil law and canon law. Chapter p, concerning customs, and how, just as a better title to property creates a presumption, so too does the Apostolic Confirmation. Cardinal De Luca, *De Judiciis*, Disp. 35, no. 63; Rota, Decree 656, no. 8 and p., part. iç. It has been observed that for over a century, the possessors of this benefit have never themselves performed any duties for the benefit. Although those who held the benefit of this place have departed, they are excused from the obligation to reside, as they are unable to support themselves. Cardinal Petra, *Ad Constitutionem 7 Innocent. III*, no. 28, and the Sacred Congregation of the Council in Fulda, November 21, 1836, § Quod. However, the income of this benefit scarcely exceeds the sum of 180 florins; from which must be deducted the sum of 60 florins to be returned to the inferior beneficiary. Therefore, since this is a non-residential benefit, it is compatible with another, and consequently, the first benefit is not vacant. Hence, if the benefit has become vacant undeservedly, the patrons will halt the request of those seeking the collation of this benefit. It appears, on the contrary, that the benefit of the Sacristan became vacant, from which another beneficiary ob-

Translated by churchlatin.ai, a product of Boyne Archives

tained a benefit in another town. Indeed, for a benefit to become vacant, according to the law, it is required that: 1. There be incompatibility of benefits, as stated in Chapter 28 concerning stipends, of the Council of Trent, Session 7, chapter 4, *De Reformatione*, Lambertini, *De Jure Patronato*, art. 16, qu. 6, no. 2. 2. The second benefit be actually acquired, which requires the taking of possession, because just as possession is that which produces the effect of the provision concerning incompatibility, so too a vacancy never arises unless possession is obtained, and it is only with the concurrence of possession that the acquisition of incompatibility is verified; for one thing is the acquisition, and another is the collation of the benefit, because acquisition is understood through possession, not through the collation of the title, as is the text commonly used in this matter in the chapter concerning stipends, in these words: "after the reception of another," which, according to the common understanding of canonists, is understood as the reception in a physical sense, through the taking of possession; otherwise, it is not said that the acquisition of incompatibility has been made, nor is it considered so without possession, nor by the defense of the patrons.

[*Latin ed. p. 25*]

The following benefits are derived from the vacation of a prior benefit, as explained in the Gloss, in the aforementioned chapter concerning many words after reception, and as noted by Fagnan, number 16, and Panormit, number 16, and Ancharan, number 1, "there." Note that by the "acquisition" of a second benefit, the first benefit becomes vacant by its enough right, and "the words 'receiving' and 'having' are understood to mean that the vacation is induced by law, after having possessed the second benefit." Therefore, the Gloss argues that only the possession of the second benefit is what makes the first benefit become vacant. In Ciernen, if several words are used to indicate the vacation of a benefit, "there." If, however, one apprehends the possession of the "last" benefit, this possession makes the first benefits "vacant." Vitalin, ibid., number 20. "Vacation is not induced by 'collation' but by the acquisition of possession."

3. It is required that the possession be complete, with the perception of fruits, or at least the greater part thereof, according to the disposition of the text in chapter 6: "If a benefit is granted to you in words, 'there.'" It is fitting that, as long as you do not perceive the fruits, the first benefit should not be considered vacant for that reason, because it is not said that someone has fully received the second benefit through an empty or sterile possession, since the full acquisition of the benefit and possession is verified in the perception of the fruits, as the Gloss rightly observes in the aforementioned chapter 4. You have a benefit granted to you in words, "there," because you have not yet fully acquired it, because although you have the benefit, you do not have the fruits, and therefore it does not seem fully transferred; for although the thing has been given, a complete possession has not been

Translated by churchlatin.ai, a product of Boyne Archives

transmitted, and therefore it does not seem that you have fully received it.

4. It is required that the possession be peaceful, because otherwise, where there are subsequent troubles, whether legal or factual, judicial or extrajudicial, it is not said that the acquisition has been made incompatible, nor is the first benefit considered to become vacant while the troubles persist concerning the second benefit. And all subsequent decrees, which were issued to explain the text in the aforementioned chapter concerning many words, stipulate that this peaceful possession is required, as can be seen from chapter 6 of the "commissa de election," "there." And you have had peaceful possession, and in the aforementioned chapter 6, "there," the Bishop can grant a benefit to another, after the Bishop has had another similar benefit, and has had peaceful possession of it. And in the aforementioned...

[*Latin ed. p. 26*]

26. The benefits of Clement, if several individuals with the same title peacefully acquire a benefice, we believe that the dignities which they previously held are vacated by that very fact, if a single individual holding a dignity is granted another benefice of a similar kind, the first is vacated by right. Therefore, the sacred canons prescribe that after two months from the acquisition of the second benefice, the first must be relinquished, because within this time it can be ascertained whether any legal or actual impediments arise, so that the case may not occur in which both should be without a benefice. And therefore, as the authors maintain, the first benefice cannot be vacated unless the two months granted for its relinquishment have elapsed, *Lotae de re benef.*, book 3, question 23, number 11; *Rota coram Merlin*, decree 6, number 10; and in the recent decisions, 131, number 7 and following; and *coram Buratto*, decree 202, numbers 1 and 2. "It is necessary that one peacefully possess the second benefice for two months, in order that the vacation of the first may be brought about." *Concilium Coloniense*, *Pastoratus*, January 168/ § "Nor only before the Royal Court, but also before the courts of Motines and Derthonen." *Beneficia*, June 2, 1703. § "And only before Omana." There is no doubt that these characteristics and these distinctions have been present in the matter; for there is no dispute between the Archpriest and the patrons regarding the acquisition of the second benefice with effect, regarding full possession with the perception of fruits, regarding peaceful possession, and regarding the lapse of two months. Therefore, the entire question is about the incompatibility of the benefice of the Sacristan with a benefice located in another town, to which is attached the obligation of assisting the parish priest. That these two benefices are incompatible is clearly evident from the fact that both must be considered residentiary; for no one doubts that a benefice with the burden of assisting the parish priest is a residentiary benefice; and that the benefice of the Sacristan is also of this kind can be

Translated by churchlatin.ai, a product of Boyne Archives

gathered from the words of the Ordinary. "One thing alone remains to be inquired into, upon which all controversy is based: namely, whether the aforementioned benefice has the burden of residence or not. In order to ascertain this, since the foundations are lacking, we must consult the acts of the Holy Visitations. Indeed, in the Visitation of Cardinal Columna, in the year 1789, page 686, the following is stated concerning this matter..."

[*Latin ed. p. 27*]

Benefits 27 « are read. Regarding the ordinary collation, there is finally the « residential benefit of the Sacristan, who participates in the choir, and who performs the duties of the sacristy either personally « or through another in Minori. The Most Reverend Anthony Barberini, speaking in the Sacred Visitation about this beneficiary, said: « He has the obligation of personally residing « and of serving as sacristan, although on May 20th, he obtained from the Holy Congregation of the Council of Trent the permission to be served by another approved by the Ordinary. He must reside and serve « personally. The Visitation of the Most Reverend Ordinary of Alteriis in the year 1637, speaking about the clergy on page 532, states: « There is « also another cleric who has the obligation of serving the sacristy « and performing minor duties, and who is obligated to serve either personally « or through a substitute wearing clerical garb and participating in one-third of the services with the Archpriest. « Therefore, the Most Reverend Ordinary continued, « we have a series « of Most Reverend Bishops over approximately two centuries, consistently testifying that the benefit of the Sacristan is residential, and that it involves the personal obligation of residence, and participation in the choir, « and the performance of the duties, which are enumerated, indicating clearly the personal presence and residence, because the words 'participates,' 'attends,' are the same as 'resides,' and are equivalent. Fagnanus, in chapter Conquerente n, 16 concerning non-resident clerics, Navarre, council 6, number 3, of the same title. The Rota in Cracow, or Neukoricen, Concionaturae, May 2, 1701, § And indeed, cor. bo. me. Muto. From the fact that the Holy Congregation has granted the beneficiary the power to fulfill his duties through a substitute, it may be inferred that the Holy Congregation was motivated by the desire that the choral services should not be abandoned if the beneficiary were hindered; but certainly not that, once the impediment has ceased or been removed, the holder of the benefit, having been dispensed from serving through another, would be excused from the choral obligation. The Most Reverend Prelate further observes on this matter: « Although, indeed, we may concede that later...

[*Latin ed. p. 28*]

Benefits 28: "It has been demonstrated that the use of serving through another is permissible, but it must be understood that this has always been

Translated by churchlatin.ai, a product of Boyne Archives

limited to minor offices, as is evident in the visitation of Emus Columna, who states concerning the sacristan, that he performs the minor duties of the sacristy, either by himself or through another." Furthermore, the Ordinary demonstrated that the account of the visitation cited by the Archpriest at the beginning of his defense is apocryphal. Moreover, the obligation of personal residence is not absent from custom; for from the documents of the Holy Visitations it is clear that the beneficiary could only fulfill minor duties through another; not, however, the duties pertaining to the divine services. For, as Jerome Vitalis, of whom Emus Barberini speaks in the visitation of Saint [Name], had an Apostolic indult to be absent from his residence and to serve through another. Therefore, it is clear that the sacristan's benefice is a residential one, and is incompatible with another benefice to which is attached the obligation of assisting the parish priest; and therefore, according to the disposition of the law, it was first subject to Text in Clementine, Gratiae 4, concerning resignation, Paris, concerning resignation, I. i, quaest. i, n. Q and seqq. Card. de Luca, de Beneficiis, disc. 92, n. 38. Even if the hypothesis were made that the sacristan's benefice were not a residential one, the Archpriest cannot maintain this. For no one can retain more benefices, even simple ones that do not require residence, when one is sufficient for the honest sustenance of life, as Barbosa states in his treatise on the offices and powers of the Bishop, Alleg. 62, n. 2. This is demonstrated by the text, because some clerics do not reside, and in Chapter [Number] it is stated that, concerning prebends, and by the Council of Trent, Session 24, chapter ii, concerning reform: "When the ecclesiastical order is perverted when one cleric holds many offices, it seemed to the holy canons that no one should be enrolled in two churches, because many, influenced by dishonest desires, deceive themselves, not God." Therefore, it seems that one cannot be excused from retaining more benefices, when one is sufficient; and they are rooted in the vice of avarice, and... "

[*Latin ed. p. 29*]

Benefits, if they arise from avarice, deprive God Himself of His due worship, and are an injustice to deserving priests who are deprived of them. Therefore, St. Gregory the Great said: "We command that each office of ecclesiastical law be assigned individually to each person; for as there are many members in one body, according to the true teaching of the Blessed Paul, this office must be conferred upon one, and another must be assigned to another; for no matter how skilled a person may be, two offices cannot be entrusted to one person at the same time, because if the whole body is an eye, where is the ear? Just as the variety of members preserves the strength of the body and represents its beauty, so too the variety of persons, through the distribution of different offices, manifests the strength and beauty of the Holy Church of God. And just as it is improper in the human body for one member to perform the office of another; so too it is exceedingly harmful,

Translated by churchlatin.ai, a product of Boyne Archives

and indeed scandalous, if the several ministrations are not distributed to as many persons." However, according to the judgment of the Eminent Ordinary, the Archpriest now has a benefit from which he can conveniently live; therefore, he is obligated to dismiss another. Having explained these matters, the proposed question must be resolved: Does the vacancy of the benefit of Sacristan arise, so that a new appointment must be made in this case?

RESOLUTION. The Sacred Congregation, having considered the matter, on July 28, 1877, decided: Affirmative in all respects.

FROM WHICH IT IS UNDERSTOOD:

I. By the very law, the first benefit is vacated by the acquisition of another incompatible benefit, while the Council of Trent also disapproves of plural benefits.

II. Benefits are properly considered incompatible when they require personal residence.

[*Latin ed. p. 30*]

30. Of Benefices, II. However, it is required that the full and peaceful possession of the second benefice be obtained, with effect: that is, with the perception of the fruits, so that the prior benefice may be vacated by law, due to the acquisition of another incompatible benefice; because the mere collation [of the second benefice] does not induce a vacation [of the first], but it is necessary that possession be obtained through acquisition. III. Moreover, the sacred canons grant a period of two months from the date of the acquisition of the second benefice, in order that the provision [holder of the first benefice] may relinquish the benefice and ascertain whether any difficulties arise, either by law or in fact; for, if difficulties exist, the first benefice is not considered to be vacated, lest the provision be deprived of both. IV. Therefore, no petition for the second benefice can be made within two months, even if the vacation of the first benefice occurs afterwards; because the other benefice cannot be conferred, unless after the subsequent vacation of the first benefice. V. Not only benefices that require personal residence are to be considered as incompatible, but also simple benefices, of which one is sufficient for the honest sustenance of life. VI. In the decree, provision is made for two benefices requiring personal residence; and therefore, it was necessary that the benefice of the sacristan should be vacated by law, after the Archpriest obtained another benefice to which was attached the duty of assisting the parish priest residing in another town.

ORDINATION. BY SUMMARY PRAYERS. On March 25, 1878. Summary of the facts. In the Diocese of A., in the Kingdom of France, among other regulations duly reviewed in Rome, there is the following synodal decree: "Ecclesiastical students shall study for two years, according to the

Translated by churchlatin.ai, a product of Boyne Archives

'ecclesiastical method,' and with a truly diligent application to philosophy."

[*Latin ed. p. 31*]

31. The Ordinary declares that Peter S. has violated this law and shall be removed from his diocese; for he had stipulated that only one year of philosophical studies was required for admission to the studies of sacred theology. Peter, who, from his early youth, had devoted himself to military studies, in order that his desired end might be achieved, diligently applied himself to theological studies in Rome at the Gregorian University. As the time approached when he would be included in the ranks of the military, unless he were initiated into the sacred Orders, he repeatedly, but in vain, requested dismissal letters from his Bishop. Therefore, having recourse to the Most Holy Father, he requested permission to receive the Orders up to and including the priesthood. The Bishop, having been consulted by the Holy See regarding this matter, responded that he had not wished to grant dismissal letters to the cleric Peter because of the violated synodal disposition; however, he had nothing against the morals or conduct of the aforementioned individual, to whom he proposed letters of excardination, so that, if he wished, he might go to another diocese.

1. It has been established in law that all those who desire to be promoted to the sacred orders must receive them from their own Bishop, according to the Council of Trent, Session 23, chapter 8 on reform. Each one must be ordained by his own Bishop. If he requests to be promoted by another, this shall not be permitted to him, even under the pretext of any general or special rescript, or privilege, even at specified times, unless the integrity and morals of the aforementioned individual are attested by his Ordinary. However, if the testimony is unjustly denied by the Bishop, recourse is granted to the Sacred Congregation; which can administer the sacred Orders, not only to the Bishop, but also to a neighboring or metropolitan.

5. In the Republic of France, those who desire to serve God by receiving the sacred Orders are exempted from military service. The monarchical government of Italy, with its rapid progress, did not approve of this; and allows only that which is useful to itself. Observe, reader, the difference and the generosity!

[*Latin ed. p. 32*]

Ordination, § 4. The same applies to letters of dispensation, which are irrationally denied; for there is no other recourse for those seeking them than to appeal to the Supreme Pontiff, who can order the Bishop either to ordain him himself or to grant the letters of dispensation, as in the case of the chaplaincy of Nepeta, May 27, 1713, question 3. Or, exercising the fullness of his power, he can grant the faculty to be promoted to another diocese, either by the Metropolitan, or by a neighboring bishop, or by any Catholic prelate, to receive the orders. Sacred Congregation of the Holy See,

Translated by churchlatin.ai, a product of Boyne Archives

Visitatio SS. LL. relata a Bened. XIV de Synod. Dioec. lib. 1, 2, cap. 8, n. 4. Indeed, the dissent of the Ordinary in the case we are considering seems irrational; for, according to his own testimony, the same cleric is adorned with good morals and is pious. This is confirmed by other Ordinaries in whose seminaries he resided to pursue his studies, having left his own diocese for reasons of health. Nor was his departure from his own diocese a detriment to the young man, because he could not endure the harsh climate of that place, and because he required a special diet due to the illness he suffered. Having briefly stated these facts, the Most Eminent Cardinals were requested to consider what response should be given to the petition of the cleric Peter.

RESOLUTION. The Sacred Congregation, after considering all matters, resolved on March 28, 1878, as follows: For the faculty to allow a cleric to be promoted to the sacred orders, up to and including the priesthood, by any Catholic Bishop, subject to the other legal requirements being observed, if the Bishop who refused to confer the orders is unable to do so for a just reason, he is not legally bound to do so; nor does the one who was refused have any right of appeal. However, the one who was refused may appeal to the Holy See and present his grievances there. The Apostolic See may then order the Metropolitan or neighboring Bishop to first request from the aforementioned Ordinary the reason for the refusal, so that if he does not allege a legitimate reason, he may be permitted to ordain him. However, it adds that the Metropolitan or neighboring Bishop, before undertaking the tasks assigned to them, should first take care to ensure that the cleric again humbly petitions his own bishops three times.

[*Latin ed. p. 33*]

33. From which [points] one may gather: I. That, by law, no faculty is granted to appeal against the decrees of Bishops; inasmuch as they are the executors of the Holy Council of Trent, so that the execution of this Holy Synod may not be suspended or hindered. II. Moreover, Benedict XIV, by the Constitution "Ad militantis Ecclesiae," removed from the ecclesiastical tribunals the faculty of receiving appeals from denials of Holy Orders, or from advancements to higher orders. III. Nevertheless, lest every avenue be closed to those repulsed from the Holy Orders, it was granted to them to appeal to the Apostolic See and to present their grievances there, so that it may be determined whether the Bishop has been for a legitimate cause in such a denial. IV. In the matter of strictness of morals, a defect of health in a young cleric, and the urgent need to be included in the ranks of the military, it appears less rational that the Ordinary renewed his refusal to allow the cleric Peter to receive Holy Orders.

REINTEGRATION OR REHABILITATION INTO THE PARISH. July 28, 1877. Summary of the case. Peter G..., a parish priest and archpriest of a certain rectory in the Diocese of B..., contracted what is called a marriage

Translated by churchlatin.ai, a product of Boyne Archives

in the year 1866, from which he had children. Having been summoned to appear before the episcopal court, he obeyed and, repenting of the deed, declared that he would go to Rome, in order to obtain forgiveness for such a crime from the Supreme Pontiff; which he promptly accomplished, and, obeying the prescriptions of the Church, he obtained absolution. Records, Volume XI, page CXXI. 3.

[*Latin ed. p. 34*]

34. Having returned to his homeland for reintegration or rehabilitation, he discovered that his Church had been entrusted to an *oeconomus* (steward) for administration, and yet, not only did he remain silent, but, so that he might not lack the title of sacred ordination, he obtained permission to be counted among the participants of that same Church. Meanwhile, having undergone a separation from his wife before a civil tribunal, he gave clear signs of repentance, so that the Ordinary granted him rehabilitation, both for preaching the Word of God and for hearing the confessions of the faithful of both sexes. In this state of affairs, seeing the parish being governed by an *oeconomus*, he petitioned the Sacred Congregation of the Council to be reintegrated, or at least rehabilitated, to the vacant parish. The Ordinary, to whom prayers for information had been sent, reported that Peter led an exemplary life; that many of the faithful, even from prominent families, desired him to be the parish priest; and that no sentence of deprivation had been pronounced against him, although the parish was being administered as vacant by an *oeconomus*. This state of affairs seemed to please Peter himself, who had obtained participation in the title of ordination in that same Church. – With these things in mind, it was debated whether reintegration, or at least rehabilitation, should be granted. A summary of the arguments. WHAT WAS PRESENTED AGAINST PETER. It was first pointed out that the benefice was, by law, vacant due to the marriage of the beneficiary, even if not consummated, indeed even if invalid, provided that the invalidity was not due to a lack of consent on the part of the beneficiary, chapter 1 and 3 concerning clerics who are married. The Rota in Leodien, marriage, February 23, 1/3/, corrected by Corio-Latini, *Institutiones Canonicae*, volume 4, book 2, paragraph 3, title 1, section 1, Fagnanus, in the chapter *Nuper De Bigam*, number 42, and others; especially on the grounds that, in a valid marriage, as well as in a marriage that is not valid, but not due to a lack of consent, the will is present to take a wife and to abandon the clerical state. It was said that the Sacred Congregation of the Council had adhered to this opinion, for in...

[*Latin ed. p. 35*]

Regarding the Reintegration or Rehabilitation into the Parish 35: – On July 21, 1674, in *Liber Decriminalium*, book 28, page 340, a question was raised: Can Caius (who had not contracted any marriage) resign

Translated by churchlatin.ai, a product of Boyne Archives

the benefice he holds in such a state? The response was: No, and the benefice is considered vacant. It was stated that an invalid marriage cannot prevent the effect of the resignation of the benefice, and furthermore, that the Most Holy Pope Pius IX, in his Allocution of September 27, 1852, called a marriage celebrated only according to civil laws an "outward concubinage"; for this effect does not depend on the validity of the marriage, but only on the fact of its celebration. The *Rota*, part 1, volume 2, decision 468, numbers 5 and 6, confirms this. Therefore, as the author, Latini, wrote in his work, book 1, part 1, title 6, section 2: "Among the Latins, it is understood that if clerics presume to take a wife, the marriage is invalid; and they themselves lose any benefice, and by this very act incur excommunication, according to Clement [Pope Clement] in *Eos qui, De Consang.*" Furthermore, it is well known that marriage entered into by clerics has always been considered a shameful concubinage: this is clear not only from chapter 4, concerning impediments to marriage, but also from the Council of Trent, session 24, canon 1: "If anyone says that clerics who have been instituted in the sacred orders can contract marriage, and that the contract is valid... let him be anathema." Therefore, since clerics instituted in the higher orders (despite ecclesiastical law) cannot validly contract marriage, and yet the sacred canons decree that such clerics, by their very act, lose their benefices, it must be stated, without any doubt, that the parish priest in question has relinquished his benefice. Furthermore, it was noted that Peter, by his actions, acknowledged the vacancy of the parish benefice, for when he learned that the parish was being administered by an economist, he not only remained silent, but also requested to be included among those present and participated in the deliberations. From this, it must be said that he tacitly renounced his position. Since a tacit renunciation is equivalent to an express one. Therefore, if, by certain actions, a benefice becomes vacant through renunciation, it is unfair for him to now oppose his own decision.

[*Latin ed. p. 36*]

36. Regarding the reinstatement, or rehabilitation, into the parish, a renunciation, with the renouncing party being considered as non-existent, and thus unable to further appeal the matter, the Rota, decision 777, numbers 4 and 5, page 18, has ruled. This argument appeared to hold great weight due to the incompatibility between the position obtained by Peter and the pastoral duties to be performed; for, according to the law, the acquisition of a benefice is incompatible with already possessing another, and therefore the first acquisition is considered void by law, as stated in chapter 6, "De Concessione Praebendae," by Clement, at the end, concerning the granting of benefices; Reiff., title 5, book 3, number 318, section 2. From all of this, it was concluded that reinstatement should not be granted to Peter. However, regarding rehabilitation, it was argued that it should be

Translated by churchlatin.ai, a product of Boyne Archives

denied due to Peter's scandalous behavior over the course of a year, which caused great scandal among the faithful; therefore, the rehabilitated person would be held in contempt, and his admonitions and corrections would be disregarded, as taught by St. Thomas, supplement, question 34, number 4: "If a person's life is despised, it follows that his preaching is also despised, and all spiritual things offered by him are rejected." And St. Bernard, in his sermon 1, on the Song of Songs, writes: "If the one who leads you is good, he is your nourisher; if he is bad, he is your tempter."

WHAT WAS ADVANCED IN PETER'S FAVOR. To support Peter's petition, it was pointed out that the aforementioned matter concerning the celebration of marriage could not be applied to his case, because what Peter did could not be considered a true marriage, nor even an attempted one, but rather a mere concubinage, as the Most Holy [Father] declared in the cited allocution, stating that marriage cannot be given among the faithful unless it is simultaneously a sacrament, and therefore any other union between a man and a woman among Christians, even if sanctioned by civil law, is nothing other than a shameful and scandalous concubinage. Therefore, although the pastor's crime was very serious, it was not a sufficient cause for him to be removed from the benefice by law itself. Furthermore, according to the Council of Trent, session 2, chapter 6, concerning the reform of incontinence, fornication, and concubinage provide a just cause for the deprivation of a benefice, provided that a threefold warning has preceded it. Thus, it is decreed there: "Those [pastors] who,

[*Latin ed. p. 37*]

Reintegration or rehabilitation into the parish: Those who live scandalously, after having been warned, should be coerced and punished, and if they still persist in their wickedness, they have the power to deprive them of benefits according to the constitutions of the sacred canons. In this canon, two things must be distinguished: namely, coercion, which is a temporary suspension from office, and total deprivation. But in both cases, a substantial form is required, namely that it must be preceded by three warnings, or one for every three, as has been extensively discussed in a decree 5*. Severini, April 4, 1778. In this, the following was narrated: The pastor of Laetti had been removed from the parish and an administrator appointed, but it was observed that for the removal, or deprivation, of a parish, a grave cause, conclusive proof, and canonical form must be observed; the question was: Whether the appointment of an administrator, or rather, whether the pastor of Laetti should be reinstated to the governance of his parish; the response was: Negatively to the first part, affirmatively to the second, reserving the right of the Promotor Fiscali to act against the pastor of Laetti according to the form of the Council of Trent, and further. Furthermore, it was observed in these substantial forms that the Holy Congregation insisted greatly, so that, due to serious

Translated by churchlatin.ai, a product of Boyne Archives

accusations, a process should be ordered at the expense of the Bishop, in the Piacentina, concerning Restoration and Rehabilitation in the parish, of January 24, 1846, in which the question was: Whether and how there is a place for restoration and rehabilitation to the parish; the response was: The case is postponed and must be re-presented within three months, with the process borne by the expenses of the Bishop. Therefore, since in this case the canonical form is completely lacking, it was concluded that everything that had been done by the Episcopal Curia should be declared invalid, according to the Rotam in Ferrariensis, Parochial, April 8, 1715; Piacentina, Parochial, December 10, 1743, § 8, before Lana, and others. However, it was argued that a tacit renunciation of the parish due to acceptance of participation in the same parish could not be sustained, since Peter did so so that he would not lack proper support. Furthermore, the Curia never transferred the parish to a new titular, and for that time.

[*Latin ed. p. 38*]

38 Regarding the reintegration, or rehabilitation, into the parish by the priest leaving, it was affirmed that the parish was not vacant. Indeed, the priest himself, averse to resignation, declared his intention when, with the arrival of the Bishop for the Vatican Council, he came to Rome and demanded his reinstatement to the parish; to whose petition the Bishop did not give heed, solely because he feared the rumors of the other participants. Finally, it was asserted that Peter was worthy of rehabilitation because of the completed penance for his crime and the irreproachable tenor of his life; because of the necessity of the Church, when another suitable person for governing the parish is lacking; and because superiors desired him for the sake of families. This rehabilitation would be, according to the sanction of chapter 4, concerning married clergy, as follows: "Those priests who contract marriage, which are rather to be called unions, after a long penance, and leading a commendable life, may be restored to their office." After these points were discussed, the matter in question was a doubt. Whether there is a place for reintegration, or rehabilitation, into a vacant parish in this case. The Holy Congregation of the Council, on July 28, 1877, decided to respond: "No, in all cases, and furthermore." From WHICH IT IS UNDERSTOOD: I. That a beneficiary can renounce his benefice, not only expressly, but also tacitly, for example, by accepting another benefice incompatible with the first, in which case, the first benefice is understood to be vacant by law. II. That it is also vacant by law if the beneficiary contracts marriage, because of the incompatibility of the conjugal state and the clerical state. However, this must be understood concerning beneficiaries who have not yet received the sacred orders. III. That priests or clerics who have received the sacred orders and contemplate marriage, do not, in any

Translated by churchlatin.ai, a product of Boyne Archives

way, incur [any penalty], and it is a shameful [act].

[*Latin ed. p. 39*]

Reintegration or rehabilitation into the Parish 39: Those living in concubinage, and those who, through such a fault, can, according to canonical forms, be removed from office. IV. Marriage between Catholics cannot be separated from the sacrament; and those who celebrate it, observing only the prescriptions of civil law, do not enter into marriage, but into a pernicious concubinage. APPENDIX. It is debated whether a cleric who has attempted marriage, either before or after the promulgation of the Constitution "Apostolicae Sedis," incurs excommunication and, if he holds an office, loses it by law. Since the resolutions of the Holy Congregations do not always proceed according to the strictest rules of law, but rather determine what appears equitable and more pleasing to God; and since it is often unknown what the reasoning behind the various resolutions may be, it frequently happens that, after reading the discussions that take place in the same Holy Congregations, the mind remains divided regarding this or that principle of law, whether it has been violated or altered. This, we believe, occurs in the case explained above, in which, although the resolution of the Holy Congregation was most wise, it nevertheless raises a doubt in the mind: whether Peter, by celebrating a civil marriage, incurred excommunication by the very act, and whether he lost his office. Therefore, we address this point of law, and we are confident that our explanation will not be entirely useless to the reader. And first, we ask the reader to note that Peter attempted marriage before the Constitution "Apostolicae Sedis" was promulgated, and therefore committed an offense against the laws in force at that time. Therefore, it seems necessary to briefly explain what was the law before, and what is the law today after the promulgation of said Constitution. Regarding the first part of the question, everyone knows that the censure of excommunication is very severe, and especially requires a strict interpretation, so that the words of the law must be strictly adhered to, so that its meaning may be understood. Indeed, clerics who attempted marriage were struck with excommunication by Clement V in the Council of Vienne, as can be read in the Clementine De consang. et affinitate. In it, the censure is imposed in these words: "Those who, fearing God, postpone..."

[*Latin ed. p. 40*]

40. Furthermore, those who, knowingly and out of concern for the salvation of souls, do not fear to act against religious women, nor do they refrain from those religious men and women, and clerics who have been instituted in the sacred orders, who contract marriages, and who desire to restrain such audacity and temerity by the fear of punishment, we decree that they themselves are subject to the sentence of excommunication, from

Translated by churchlatin.ai, a product of Boyne Archives

the very moment of the act. The Supreme Pontiff Pius IX, in his Apostolic Constitution, modified the preceding law somewhat, declaring that excommunication is reserved to the Ordinaries: "Clerics instituted in the sacred orders, or religious men or women who, after a solemn vow of chastity, presume to contract marriage, nor also those who presume to contract marriage with any of the aforementioned persons." It is not our task to investigate the difference between the aforementioned Clementine decree and the canon of the Apostolic Constitution; let others examine it; it will suffice for us to note that nothing has been changed with regard to the question before us, and therefore there is no need for us to labor to investigate the difference between the old and the new law introduced by the Apostolic Constitution. Canonists have taught that, in order for censure to be incurred, the external sin for which the censure is imposed must be completed in its kind, according to the meaning of the words contained in the precept or law (Scmalzgrueber, book 5, title 39, n. 34). Therefore, a cleric instituted in the sacred orders incurs excommunication if he attempts a true and proper marriage, with the intention of contracting it, so that nothing would impede its validity except the impediment of the order he has taken. However, if a defect in consent, form, jurisdiction, or something else prevents the marriage from being valid, the cleric is not subject to excommunication, because it cannot be understood that he has actually contracted marriage, and therefore the external sin for which the censure is imposed is not completed in its kind, according to the meaning of the words. Bonaccina (Disputation II, Question II, point IX, n. 9) teaches that excommunication is not incurred by one who feigns to contract marriage, "for he who feigns to contract marriage is not said to contract marriage in a matrimonial sense, as the text says, and the act of contracting is not said to be perfect if the intention and purpose are lacking; for the contract is perfected by mutual will." And n. 16 states that clandestinity prevents censure: "for he is not said to contract marriage in a matrimonial sense who contracts in the absence of the parish priest and witnesses." This opinion is followed by Peter Ledesma, Cavarruvias, Sánchez, and many others. Therefore, the opinion pleases us which holds that a cleric instituted in the sacred orders, who contracts a civil marriage, is not subject to excommunication at all. We are moved by the reason that when not the intention but the act is prohibited by some censure, the act must be completed in its kind in order for it to be incurred; the matter is of strict interpretation; and the mere intention of the act is not sufficient for punishment.

[*Latin ed. p. 41*]

Appendix 41, Maschat. Institutes of Canon Law, Concerning Excommunications, § 20, because the act is understood by the effect that follows. From this principle, it follows that, although the one who rebaptizes is irregular, he does not incur irregularity, if he does not have the true intention.

Translated by churchlatin.ai, a product of Boyne Archives

He who strikes a cleric is excommunicated, if, however, he strikes one who is not a cleric, although he believes him to be so, he does not incur excommunication at all. From the aforementioned Clementine documents, those who contracted marriage within the prohibited degree of consanguinity were excommunicated; nevertheless, he did not incur censure who, believing that he was contracting marriage with a relative, contracted marriage with a woman who was not actually such a relative. Therefore, if in these cases, the act is not completed, censure is not incurred at all; how, then, will we teach a priest that he incurs censure for a civil marriage, which in the Church is not considered as an impediment to marriage? Woe to that priest who will be wicked, scandalous, a concubinarian, a criminal, deserving of any punishment; but let us be careful not to strike him with the sword of excommunication as well. This opinion seems to us to be the truest even today, after the promulgation of the Apostolic Constitution, indeed, we believe that it is suggested by its very words: "those who presume to contract marriage." In no way can we believe that the word "marriage" was used to denote a civil contract by the Supreme Pontiff, who in his Allocution of September 27, 1852, called it a "shameful and harmful concubinage." He condemned in the Syllabus (n. LXXIII) the proposition that, by the force of a mere civil contract, a true marriage could exist among Christians. Therefore, just as before the Apostolic Constitution, it was not understood to be a marriage in the matrimonial sense, for one who, in the absence of a priest and witnesses, entered into a marriage agreement, so today it is not presumed to be a marriage for one who celebrates only a civil ceremony, which, because of the impediment of clandestinity, cannot be called a marriage. We are not moved by the objection that the legislator, in this case, could not have intended to refer to a true marriage, because marriage must be none at all in any case, due to the bond of order. For it is certain that the ecclesiastical legislator, by using the word "marriage," could not have intended to refer to that act which different legislation calls "marriage" independently of the sacrament: for in the Church, marriage and the Sacrament cannot be separated. And therefore, it is certain that he must have been referring to that contract which, if not for the obstacle of an order or a solemn vow, would have been a true marriage according to the laws of the Church. But the word "presuming" indicates a certain audacity in disregard of the impediment of the said vow or order, whereby, notwithstanding, it is presumed that a marriage is entered into according to the rites of the Church. On this matter, Suarez writes (De Censuris - Disp. 23, Lect. V): "Although in reality this Sacrament cannot be perfected among such persons, nevertheless, it can be performed on their part in the same way and with the same will as if they themselves..."

[*Latin ed. p. 42*]

42. Appendix: "Were such persons capable of contracting marriage,

Translated by churchlatin.ai, a product of Boyne Archives

and then would this 'censure' apply?" Commentators on the Apostolic Constitution, such as Cretoni, the Theologian of Rieti, Gabriel of Varceno, Huguenin, and Bertapelle, all of whom addressed questions posed to the Clergy of Padua, all maintain this opinion. One person, as far as we know, dissents: Avanzinius, the most learned founder and editor of these ephemerides; but we fear that his opinion rests on too fragile a foundation, for he defends his view on the grounds that a civil contract has the form of marriage. Indeed, after the Council of Trent, it is highly doubtful whether a civil contract truly possesses the form of the Sacrament of marriage. Furthermore, Trent established a solemn and substantial form for marriage, decreeing that it must be contracted before a priest and two witnesses, rendering any marriage contracted otherwise invalid. Therefore, how can it be said that a civil ceremony has the form of marriage, when it is deficient in the essential form required by the priest? Moreover, Avanzinius's theoretical position would lead to the conclusion that every cleric who privately, but before the Apostolic Constitution, contracted marriage before witnesses would incur excommunication; yet all canonists and theologians teach the contrary. Nor is it true that a civil marriage is null only by accident, for the form prescribed by Trent is substantial; it is a condition without which; it is something constitutive of a Catholic marriage in places where the law of Trent was promulgated; so that it can be said that just as a defect of consent renders marriage invalid from within, so a defect of form renders it invalid from without. Therefore, we seem to be able to conclude with prudent certainty that a priest contracting a civil marriage does not incur excommunication, despite the impediment of clandestinity, which necessarily affects every marriage that is only civilly entered into. However, we understand these statements to apply to those regions in which the law of Trent regarding marriage is accepted; for if the matter were concerning places in which Trent does not hold sway, we have no doubt that such a priest (provided that no other impediment besides the sacred order prevents him) would incur excommunication. But what if he possessed a benefice? Would he lose it by right? This is the second part of our discussion, which we will address briefly. There are canonists, and not of low repute, who defend the affirmative opinion, especially supported by these reasons. Firstly, because by contracting marriage, the cleric, as far as he is concerned, assumes a state incompatible with holy orders and a benefice, and therefore he should be considered as one who has accepted another incompatible benefice; in which case, the first is considered to be vacated. Secondly, because the cleric celebrating the marriage contracts a bigamous similitude.

[*Latin ed. p. 43*]

Appendix 43. Nevertheless, the opinion that appears to us to be more correct is that which denies what the most eminent canonists assert in Chap-

Translated by churchlatin.ai, a product of Boyne Archives

ter 1. If someone, among the clergy, has taken a wife, as is the case here, and this is of the following tenor: "If any among the clergy, below the rank of subdeacon, have taken wives, let them be compelled to relinquish their ecclesiastical benefices and to retain their wives under ecclesiastical jurisdiction. But if those who have been found to have taken wives in the subdiaconate and in higher orders, let them be compelled to dismiss their wives, and to do penance for their offense, by sentence of suspension and excommunication." Here, the canonists teach that Alexander III, in this chapter, distinguishes between lesser and greater clergy; the former are commanded to relinquish their benefices because they are understood to be vacant by law, as is said in the Glossary; the latter are compelled to dismiss their wives by the penalty of suspension, a penalty which could not possibly be applied if the benefices were vacant by law. Indeed, a cleric who enters into marriage in the sacred state is, by law, deprived of his benefice, either because he has assumed an incompatible status, or because of the penalty of a crime; but it cannot be said that the marriage is invalid; nor can it be said that this penalty has been established anywhere. Do not bring up the comparison with lesser clergy, for these truly contract marriage; whereas, greater clergy only contemplate it, and therefore, like the former, they do not change their status. From these considerations, you have the most conclusive answer regarding the reasons against the contrary opinion, namely, that a greater cleric could not have intended to change his status, nor to tacitly renounce his benefice, when he clearly knew that the marriage was null. Furthermore, this is analogous to bigamy, which is contracted when a carnal union follows, as stated in Chapters 1 and 2, which concern those who are clergy or who vow. Chapter 4, Concerning Clerks, contains similar provisions. All of these things are valid when a marriage has been contemplated, observing all the solemnities of the Church, so that nothing else would impede its validity than the sacred order; how much more, therefore, should it be said that these things are valid concerning a cleric who contracts a civil marriage, which, due to its secrecy, does not even have the appearance of marriage? If an excommunicated cleric does not lose the fruits of his benefice by law, because it is not sanctioned anywhere; how can you say that a cleric, who certainly committed a crime, but to whom neither excommunication nor any other penalty is attached, loses his benefice by law? Here also, we are dealing with odious matters, therefore a strict interpretation must be applied, and penalties should not be imposed that the law has not expressly decreed. Against these criminals, the Ordinaries should proceed according to the established canons, and if it does not seem expedient for them to hold benefices in the Church of God, they can be compelled by sentence to relinquish them. From what has been said so far, it is evident that, in the case above, Peter neither incurred excommunication nor lost his benefice by law. But be careful, kind reader, lest you infer from

Translated by churchlatin.ai, a product of Boyne Archives

this that we are accusing the Holy Congregation of being false or unjust.

[*Latin ed. p. 44*]

Appendix 44, concerning the resolution of the Congregation. Our opinion differs greatly. Consider Peter, who lived in concubinage for a year, and therefore caused a very grave scandal to his people. Although, if today he hears confessions, preaches the word of God, and performs other duties pertaining to the ecclesiastical ministry, perhaps he is less suited to govern a parish in the quality of a pastor than a ravenous wolf. Furthermore, by his action, and by the acceptance, indeed, of a benefice, he may be presumed to have tacitly renounced the compatibility of his condition with the benefit of the parish. These and other matters may have been the reasons why the Holy Congregation gave its response to the report, and it does not pertain to us to investigate them. We merely state, adhering to the dispositions of the law, that a cleric, established in the sacred state, having entered into a civil marriage, does not incur excommunication, nor, if he has one, does he lose his benefice by that very fact. Indeed, we believe that a lesser benefice is not lost by a cleric; for in this case, he fell away from the benefice by the very fact, because the marriage was valid, and the cleric was established in a state incompatible with the benefice; which cannot be said of a civil marriage. This is our opinion, and if anyone should object to it, we will not be offended; indeed, if they present valid reasons, we will gladly go over to their opinion.

Instruction concerning public schools, addressed to the Most Reverend Bishops in the United States of America.

1. The Holy Congregation of Propaganda Fide has been informed on several occasions that grave harm threatens the Catholic youth in the United States of America from so-called public schools. This sad news has caused us to address the Most Reverend Bishops of that region.

2. Although this instruction reached our hands late, we cannot omit it; for it will be more useful to all, especially in the times in which we live. Indeed, not only in the distant regions of America, for which it was issued, but also among us, there are schools that are either entirely hostile to the Catholic Church, or that, under the guise of impartiality, completely reject religious instruction. This arises from the fact that the leaders of Europe either pursue with fierce hatred or, more likely, do not properly understand the Christian religion and morality. They believe, in order to deceive the simple, that youth should only be imbued with morality. But what, then, is morality without religion? What kind of morality will such a morality be? The foolish or perverse do not want to know, or ignore, that Religion and morality are one in practice, and that neither can exist without the other.

[*Latin ed. p. 45*]

The Instruction concerning public schools in the United States addressed

Translated by churchlatin.ai, a product of Boyne Archives

to the Bishops of that jurisdiction, considered it necessary to propose certain questions, partly concerning the reasons why the faithful allow their children to attend non-Catholic schools, and partly concerning the means by which it might be easier to prevent young people from being drawn away from such schools. Furthermore, the responses drawn up by the esteemed Bishops and submitted to the Supreme Congregation of the Holy Office, due to the nature of the matter, were thoroughly examined, and on Thursday, June 30, 1875, after careful consideration, it was judged by the Most Reverend Fathers to be resolved by the following Instruction, which was subsequently approved and confirmed by Our Most Holy Lord on Thursday, November 24 of the same year. Moreover, the very method of educating youth in such schools was primarily to be considered, as being its own and peculiar characteristic. This, however, appeared to the Sacred Congregation to be fraught with danger, and exceedingly detrimental to the cause of the Catholic faith. For the students of such schools, since their very method excludes all instruction in religion, neither learn the fundamentals of the Faith, nor are they instructed in the precepts of the Church, and therefore they lack the knowledge most necessary for man, without which one cannot live a Christian life. Indeed, in such schools, young people are educated from the very beginning of childhood, and almost from the tenderest age, at which time, it is well known, the seeds of virtue or vice cling tenaciously. Therefore, if such a malleable age grows up without religion, it is certainly a great evil. Furthermore, in the aforementioned schools, since they are separated from the authority of the Church, it is absurd to think that teachers can be chosen indiscriminately from every sect. Anyone can foresee the consequences of this supposed freedom: in the courts, daily are recounted robberies, frauds, suicides, assassinations, murders, and other similar crimes committed by men who, although educated in letters, lack religious instruction. Is it not better for parents to have their children completely devoid of instruction, than to have them grow up steeped in error and corruption of heart? If the rulers of the nations were ever wise, they would recognize that there is no other remedy to prevent crime than the use of the Catechism: "For with it, nations are healed," says a learned man; and a young person instructed in the Catechism will be able to resolve the higher questions of natural and divine law. "Religion," says another learned man, "is the foundation of science, and the safeguard by which science is protected from corruption."

[*Latin ed. p. 46*]

46. Instructions regarding public schools in America are applied, and furthermore, in order that they not bring harm to youth, no law is enacted, so that it is free to instill the seeds of errors and vices into tender minds. Moreover, a certain corruption arises from this, because in these schools, or at least in many of them, adolescents of both sexes are gathered together

Translated by churchlatin.ai, a product of Boyne Archives

in the same hall for lessons, and are ordered to sit on the same bench, men next to women. All of this causes youth to be miserably exposed to the danger of harm concerning the Faith, and their morals are imperiled. This danger of perversion, unless it is removed immediately, means that such schools cannot be attended with a safe conscience. This is proclaimed both by natural and divine law. Furthermore, the Supreme Pontiff clearly decreed this to the former Archbishop of Freiburg, on July 14, 1864, writing as follows: "Indeed, where in any places or regions such a pernicious method of educating youth were to be undertaken, or were to be brought to completion, youth would be miserably exposed to the danger of harm concerning the Faith; then the Church should not only strive with the utmost diligence, sparing no effort, to ensure that the same receives a necessary Christian institution and education, but also be compelled to warn all the faithful, and to declare to them that such schools, being opposed to the Catholic Church, cannot be attended with a safe conscience. And this, being founded on natural and divine law, is a general principle, and has universal force, and applies to all regions where such a pernicious method of educating youth has unfortunately been introduced. Therefore, it is necessary that the Most Reverend Bishops, with whatever means and efforts they can, protect their entrusted flock from all contagion of public schools. It is now universally agreed that, for this purpose, it is necessary for Catholics everywhere to have their own schools, and that these should be no less than public schools. Therefore, Catholic schools, whether they are to be founded where they are lacking, or expanded and perfected, should be prepared to equal public schools in their institution and discipline."

[*Latin ed. p. 47*]

The Instruction concerning public schools in the United States must be considered with the utmost care. And so that this most sacred plan may be carried out, and so that it may be rendered not useless, if the Bishops deem it advisable, members of Religious Congregations, whether men or women, should be enlisted, and the expenses necessary for this undertaking should be provided with such generosity and abundance by the faithful, through suitable occasions, whether through pastoral letters, sermons, or private conversations; it is seriously necessary that they be reminded that they will be gravely failing in their duty unless they provide for Catholic schools with all the care and expense they can. Above all, those among Catholics who are distinguished by their wealth and authority among the people, and who are involved in the enactment of laws, must be warned about this. And indeed, in these regions, no civil law prevents Catholics, as they see fit, from educating their children in their own schools in all knowledge and piety. Therefore, it is within the power of the Catholic people to avert the disaster that the public schools there threaten to bring upon the Catholic cause. Moreover, let all be persuaded that it is of the greatest

Translated by churchlatin.ai, a product of Boyne Archives

importance, not only for individual citizens and families, but also for the flourishing American nation, which has given so much hope to the Church, that religion and piety are not banished from their schools. Furthermore, the Holy Congregation is aware that there are sometimes circumstances in which Catholic parents may feel justified in sending their children to public schools. However, they will not be able to do so unless they have a sufficient reason for acting in this way; and whether such a sufficient reason exists in a particular case will be left to the conscience and judgment of the Bishops; and in such cases, a just reason will usually be present when either no Catholic school is available, or, if one exists, it is not sufficiently suitable for properly educating children according to their condition. However, in order that public schools may be approached with a clear conscience, the danger of perversion, which is more or less always connected with their very nature, must be remedied and prevented by appropriate precautions.

[*Latin ed. p. 48*]

48. Instruction concerning public schools in North America at that time. Therefore, it must be carefully considered whether there is a danger of corruption in the school in question, such that it is entirely impossible to avoid, as when, for example, certain things are taught there, or actions are performed, which are contrary to Catholic doctrine and good morals, and which cannot be heard or performed without harm to the soul. Indeed, such a danger, as is evident, must be avoided at all costs, even at the cost of some temporal loss, even of life. Furthermore, the youth, in order to be able to attend public schools with a clear conscience, must receive the necessary Christian instruction and education, at least outside of school hours, properly and diligently. Therefore, pastors and missionaries, mindful of what the Council of Baltimore most prudently established concerning this matter, 1 must diligently attend to catechesis and especially devote themselves to the truths of the Faith and to morals, which are opposed by unbelievers and heretics.

1. N. 435: "But when, in all parishes, Catholic schools cannot yet be established, due to circumstances, and there is no place for daily and necessary instruction except in public schools, then all precautions must be taken so that the Catholic youth suffer as little harm as possible from this. To this end, catecheses and Christian instruction schools should be established. On Sundays and other holidays, and sometimes even more frequently, pastors should gather the boys and girls in their own church, in order to diligently and carefully teach them the elements of Christian doctrine. N. 436: "The shepherd must obey the warnings and precepts of the Church; and animated by the example of the saints, indeed of Christ Himself, the Good Shepherd, he must pursue the little ones, entrusted to him, with singular love, watch over them with the utmost care, and defend and protect them with tireless vigilance and solicitude from the snares and attacks of

Translated by churchlatin.ai, a product of Boyne Archives

wolves and ravening beasts. He must himself take care to preserve that most beautiful flower of integrity and innocence, and that unspeakable gift of baptismal grace, which they enjoy, as the pupil of his own eye. He must instruct and accustom them in such a way that they may willingly frequent the house of God and His holy courts, and there, gathered together, be imbued with the precepts of holy life and morals. Let the rudiments of faith and piety be instilled in their still tender minds, so that they may be strengthened and fortified in later years, and be a protection against all the snares of the devil and of wicked men. N. 437: "Parents should, by all means possible, encourage their children to attend. They should be encouraged by exhortations, deterred by threats; they should be prayed to, so that they may send their children to church during catechetical instruction. Those who are more eager to assist and learn should be attracted by small gifts and rewards. For this is what the teachers of heresy do daily, in order to attract Catholic children to their own..."

[*Latin ed. p. 49*]

Instructions regarding public schools in the United States: Forty-nine dangers are present; and the youth, exposed to so many perils, must be instructed with diligent care, so that they may frequently receive the Sacraments, strive for piety towards the Blessed Virgin, and be repeatedly encouraged to firmly adhere to the Faith. Furthermore, parents, or those in their place, must diligently watch over their children, and either themselves, or, if they are not suitable, through others, question them about what they have learned, examine the books given to them, and, if they find anything harmful, provide antidotes, and completely prevent and prohibit them from associating with classmates from whom danger to the Faith or morals may arise, or whose morals are corrupt. However, this necessary Christian instruction and education is not given to children if parents neglect it; or if they allow them to attend schools where the ruin of souls cannot be avoided; or finally, if, although they send them to Catholic schools, they are imbued with the poison of error and are harmed eternally. Will the minister of God and of our most holy Religion diligently and carefully fulfill this duty, so that he may preserve his own, and not lose anyone of those whom the Father has given to Christ? (John 17:12; 18:9). N. 438: "And this duty must not be delegated to others, as is often the case through negligence, but must be carried out by oneself. For the task of instructing children in the fundamentals of the Christian faith is so closely linked to the pastoral office that he who is unwilling to undertake it out of laziness or idleness, or who shirks it, cannot avoid the penalties of a violated office..." N. 439: "While striving to educate children in the knowledge of divine things, he should devote all his effort to ensuring that, as Augustine says (De moribus Eccl. cathol., book 1, chapter 30), he teaches children in a childlike manner: that is, with such

Translated by churchlatin.ai, a product of Boyne Archives

ease and simplicity as is appropriate for their weakness and inexperience. He should explain the highest mysteries of the faith in a way that is suited to their age and understanding. Even though many adults are often present during catechesis, he should never use elaborate or elegant words, but only those that are simple, clear, and easily understood by all, even the most uneducated. He who teaches, Augustine aptly points out (De Doct. christ., book 4, chapter IX, sections 23 and 24), should not be concerned with how eloquently he teaches, but with how clearly. A diligent pursuit of clarity sometimes neglects more refined words, and does not care what sounds good, but what indicates and reveals what he intends to show... What is the benefit of the integrity of language, if it is not followed by the understanding of the listener, when there is no reason for speaking at all, if those for whom we speak do not understand what we are saying?" (Colossians 1:25, cited). Acts, volume XI, page 122.

[*Latin ed. p. 50*]

50. Instruction concerning public schools in America: If a suitable and properly instructed school, prepared to receive them, exists in the same place, or if, although they have the means to educate Catholic children in another region, they nevertheless entrust them to public schools without sufficient reason and without the necessary precautions, by which the danger of perversion might be averted; it is manifest from Catholic moral doctrine that, if they are contumacious, they cannot be absolved in the Sacrament of Penance. APOSTOLIC LETTERS by which the office of Supreme Moderator of the Living Rosary is entrusted to the Master General of the Order of the Friars Preachers. PIUS PP. X. FOR THE EVERLASTING MEMORY. This, which had also belonged to the illustrious Order of the Friars Preachers in Gallus, having been repeatedly confirmed by the Apostolic See by hereditary right, namely, to spread the pious exercise of the Rosary, and to establish sodalities of the Holy Rosary, the Presidents of the three aforementioned Provinces of the Order in Gallus, with prayers repeated according to the established rite, convene. 1. From the piety and industry of the blessed memory of Mary Jaricot, born in Lugduni, arose the Sodality of the Living Rosary, whose members, divided into groups, each month draw a mystery to meditate upon and to recite the decade, for each of the days of the month; and thus, in the following months. This Sodality, increased in number, has been praised and enriched with indulgences by the Most Reverend. "According to Ferraris," after the threshold [limine] is "the right of recovering what has been lost from a foreigner, and of restoring it to its former state."

[*Latin ed. p. 51*]

The Apostolic Letters 51, glorious Pope Pius XVI, Our Predecessor, who bestowed the most eminent man, Aloysius Lambruschini, then Apostolic

Translated by churchlatin.ai, a product of Boyne Archives

Nuncio in Gallus, as the patron of this same Sodality, and who appointed the esteemed son, Betemps, Canon of the Metropolitan Church of Lugdunensis, as the supreme Moderator of the same Sodality, and who had the power to choose the Presidents of such Sodalities in the other Dioceses, and to appoint Zealots to the individual sections of these same Sodalities. Indeed, since both those to whom the Holy See, as mentioned above, had entrusted the patronage and governance of this Sodality have passed away, and since the aforementioned Sodality, having been restored to the family of the Brothers Preachers in Gallus, of which three Provinces are established there, seems to be in danger of losing its Indulgences, and is deprived of its original constitution and order, the esteemed Presidents of the three Dominican Provincial Chapters existing in Gallus earnestly request Us to entrust the supreme governance of the Rosary to the Master General of the aforementioned Order, and to entrust the governance and care of the individual sodalities or societies of this kind to the Moderators of the Confraternities of the Holy Rosary, which are established in each place, by Our authority. Therefore, wishing to comply with these requests, and desiring to favor all those to whom these Our letters are addressed with a special grace, and absolving and considering absolved those who may, for any reason, have incurred excommunication and interdict, and other ecclesiastical sentences, censures, and penalties, in any way or for any cause, for this very reason, by Our Apostolic Authority, for all times, past, present, and future, We entrust the office of supreme Moderator of the Rosary to the esteemed son, the Master General of the Order of the Brothers Preachers, and We entrust the governance and care of the Sodalities or Societies of the Holy Rosary to the Presidents or Moderators of the Confraternities of the Holy Rosary, which are established in each place, also by Our authority, and perpetually. We decree that these Our letters shall exist and be firm, valid, and efficacious, and shall have their full and complete effect.

[*Latin ed. p. 52*]

Letters 52. To obtain and enjoy the benefits of these Apostolic Letters, and to fully support and uphold everything contained herein, it is decreed that these matters shall be judged and decided by any and all ordinary judges, and by delegates, even those of the Apostolic Palace, Auditors of the Apostolic See, Nuncios of the Holy Roman Church, Cardinals, even as legates from the side, and any others whatsoever, exercising and about to exercise any authority or power, with all impediments and any other means of judging or interpreting removed from them and from each of them, and that they shall be judged and decided; and that anything attempted by anyone, with any authority, knowingly or unknowingly, contrary to these matters, shall be null and void. Notwithstanding Our Apostolic Chancery's rule regarding matters of law, which is not to be set aside, and all other things, however special and individual, which might be contrary to these,

Translated by churchlatin.ai, a product of Boyne Archives

and which are worthy of specific mention and derogation. We decree that to these present Letters, whether transcribed or in printed form, signed by the hand of a public Notary, and sealed with the seal of a person constituted in ecclesiastical dignity, the same full faith shall be given as would be given to these present, if they were exhibited or shown. Given at Rome, at St. Peter's, under the Fisherman's ring, on the 17th day of August, in the year 1877, in the thirty-second year of Our Pontificate. F. Card. ASQUINIUS. L. © S. NOS F R. JOSEPHUS MARIA SANVITO, Professor of Sacred Theology and General Vicar to all the Fathers, Brothers, and Sisters of the Order, Greetings and the Spirit of Holy Exultation. To the same Order, With the Most Holy Divine Name of Our Lord, Pope Pius IX, through a Brief, which by hereditary right, was given on the 17th of August, 1877, entrusting to us the supreme governance of the Living Rosary, by virtue of the powers thus attributed to us, we declare and order the following.

[*Latin ed. p. 53*]

Apostolic Letters 53. All Directors of the Living Rosary currently holding office are hereby confirmed in their office for life, with the faculty of choosing new Zealous members, even assigning them to new groups. Similarly, all Zealous members currently holding office are confirmed in their office for life. Finally, all members received by the aforementioned Zealous members up to this point, or who will be received by them in the future, are to be considered legitimately admitted, so that they may freely enjoy all the indulgences and graces granted or to be granted to the Living Rosary. In the future, however, in order that anyone may be legitimately enrolled in the Sodality of the Living Rosary and enjoy the indulgences granted to this Sodality, it will be necessary for them to be chosen or approved by some Zealous member, who themselves have been approved or instituted by a legitimate Director of the Living Rosary. Legitimate Directors shall be: 1. According to the aforementioned Brief, all Directors of Confraternities of the Most Holy Rosary, which in each place have been canonically erected or will be erected in the future by the General Master of the Order of Preachers, with the consent of the Ordinary; 2. In places where a Confraternity of the Most Holy Rosary does not exist, Priests who have been instituted either directly by us, or by the Reverend Fathers Provincials (by virtue of a delegation which we grant to each in his Province). Recently, certain authentic documents pertaining to the Living Rosary have come into our hands, which have never yet been brought before the tribunal; others, which are lacking to us, we will endeavor to find. After examining and considering all of these things, and after consultation (if necessary, in order to remove every possibility of doubt) with the Holy Congregation of Indulgences, we will take care to prepare a small booklet in which those things pertaining to the aforementioned devotion of the Living Rosary will be accurately explained. Therefore, we append to these our Letters a Pontifical Brief, and we

Translated by churchlatin.ai, a product of Boyne Archives

command that all conform to what is prescribed therein. Let us, therefore, with fervent prayers, beseech God for our Holy Father Pius X, who has offered a new proof of his benevolence to our Order. While we impart our blessing to all of you from the heart, we also commend ourselves, and our companions, to your prayers. Farewell. Given at Rome, in the Convent of Our Lady Major, above the Ministers, on the 15th of November, in the year of Our Lord 1877, in the pontificate of His Holiness Pius X. Father Joseph Maria Sanvito, General Vicar of the Order of Preachers. "I. S. Father Hyac. Marchi, Province and Sub-province, Register, page 226."

[*Latin ed. p. 54*]

FROM S, CONGREGATIONE GONGILI! MARRIAGES OF TRENT. July 25, 1874, June 30, and September 22, 1877. Summary of the case. After a period of seven months during which they had endured mutual anxieties, Nicholas, who was over thirty years of age, and Marianna, who had not yet completed her fifteenth year, entered into marriage before the Church, on August 18, 1858, after all things had been properly completed. After this, the spouses joyfully returned to the paternal home of the bride. Although, as the woman asserted, she felt a burning love for her husband and the husband provided for her needs, the marital union, after being attempted once, then again, and a third time, failed to be consummated on the first night. For, as she approached, the man would hastily spill his seed outside of her. Thus, every attempt made seemed to be in vain. However, the man claimed that the marriage had been consummated on the very first night, although not completely. At times, the woman's love for her husband began to gradually cool, and aversion began to arise, which increased to such an extent that the man, after a not insignificant quarrel, said farewell to his wife and went to the home of his father-in-law; the wife, in turn, returned to her parents' home. The reader should be warned that this matter was first discussed before the Most Holy Dicasteries in order to prove the man's impotence. The greatest difficulty in reaching this conclusion was presented by the man's stubbornness in vehemently affirming his potency, by the first medical report, and by the abnormal and belated manner in which the judgments of the first and second grades were rendered. Therefore, the Sacred Congregation, so that all hope would not be taken away from the unfortunate woman, after the first proposal, in which the response was: "Delay, etc.," wished that the process be conducted regarding the non-consummation of the marriage, postponing the impediment of impotence, since it was more difficult to prove. The woman always asserted the non-consummation of the marriage; and in order to prove this, she repeatedly and urgently requested a new examination of her body, but in vain.

[*Latin ed. p. 55*]

Matrimonii 55. Post haec, die 18 Februarii 1860, mulier adit Curiam

Translated by churchlatin.ai, a product of Boyne Archives

Episcopalem L., et per libellum supplicationis instat ut, secundum SS. Canones, matrimonium nullum declararetur ex causa impotentiae viri. Curia, electo defensore ex officio, processum, Deo miserecens, iuxta Constitutionem Benedictinam instituere coepit, partes et testes examini subjiciendo, et relationem a Medicis et Chirurgis, de corporibus conjugum, ad eadem inspecta, sibi comparando. Hisce confectis, Canonicus Poenitentiarius, delegatus a Vicario Capitulari, die 28 Martii 1863, vocavit partes ut die 30 in iudicio sisterent ad audiendum tenorem definitivae sententiae, quae tamen eadem die 28 edita fuit, et, nonnullis exceptionibus a mulieris defensore oppositis, die 10 Aprilis dicti anni publicata fuit, decernens: non constare de impotentia Nicolai; ideoque matrimonium de quo agimus validum esse. Mulier illico ad Metropolitanam Curiam provocavit; penes quam causa haec siluit per novem menses. Hac de re, Nicolaus instat, ut peremptioni appellationis locus fieret; et sententiam, votis consonam, sub die 1 Februarii 1864, obtinuit a Delegato generali Vicarii Capitularis pro omnibus causis iurisdictionis illius Curiae. Contra quam sententiam, Marianna restitutionem in integrum obtinuit die 31 Ianuarii 1866 a S. C. Concilii; pro qua uxor vocavit virum non modo ad Curiam Metropolitanam, sed etiam ad forum saeculare, a quo eius petitio reiecta fuit et sententia Curiae confirmata. Cum tamen vir imparem se noverit, novis expensis iudicialibus ferendis, per acta publici tabellionis sub die 9 Aprilis dicti anni, declarationem propriae frigiditatis transmisit. Verumtamen, postea factus poenitens, Curiam Metropolitanam adivit, et dictum mandatum solemniter revocavit. Post haec, ventilata fuit causa coram iudice a Metropolitano deputato, et omnibus rite absolutis, prodiit sententia, qua acta omnia Curiae L. confirmata fuerunt. Rite pandita mulieri sententia die 2 Martii anni dicti ad...

[*Latin ed. p. 56*]

56. The marriage case was brought before the Sacred Congregation of the Holy Office; which, having received the petition, sent letters to the Archbishop, requesting that he transmit the complete procedural records in their authentic form. However, these documents did not reach the Sacred Congregation until March 8, 1870; whereupon, a decree was issued stating that the cited portion should be read aloud, and that the defender of the marriage should be heard ex officio. After this, the matter remained pending until the year 1872, when the same Sacred Congregation, acting ex officio, resumed the case, ordering that the aforementioned decree be notified to the Ordinary, and that he should report whether the parties had taken any further action regarding the case. Upon receiving the response, a written order was sent to the woman, setting a reasonable deadline for her to pursue her appeal. One month was set as the deadline, but more time passed without either the woman or the man taking any action. Then, with the permission of the Supreme Pontiff, the Sacred Congregation decided

Translated by churchlatin.ai, a product of Boyne Archives

that the case should be treated as if it were a pauper's case, as the woman had requested, after the opinions of theologians and canonists had been heard, as well as the observations of the defender of the marriage. However, in order to proceed cautiously in this matter, the opinions of several eminent physicians of this learned city, experts in medicine and surgery, were also sought. The conclusions of their reports were: 1. that such a marriage had not been duly consummated; 2. that the man was unable to perform this act due to nervous or dynamic impotence; 3. that it would be useless to examine the man's body today; because, if his impotence was perhaps temporary at the time of the marriage, now, due to the man's advanced age, and the long period of time that has passed, the same impotence has become permanent.

Synopsis of the arguments.

OPINION OF THE THEOLOGIAN. After the theologian had presented a brief history of the facts, he stated that it was necessary to determine whether the opinions of the diocesan and archdiocesan courts should be upheld or overturned. To this end, he investigated two matters. First, whether the legitimate forms of judgment had been observed and whether the judgments had been rendered by a competent judge; and second, whether those judgments were based on valid reasons.

[*Latin ed. p. 57*]

The foundations of the marriage are fifty-seven. And concerning this matter, he says, it cannot be doubted that the special regulations of the Benedictine Order were most fully observed in both places of judgment; nor does any doubt fall upon the legitimate introduction and also the prosecution of the judgment, but doubt can arise concerning the sentence. For this sentence was not pronounced by the Bishop or his general vicar, nor by the Capitular Vicar himself, but by a Canon Penitentiary, who, having been the Vicar of the Bishop and the legitimate examiner of the cause while the Bishop lived, after the Bishop's death, the Capitular Vicar not being elected, but the Archdeacon being elected as the Capitular Vicar, extended the same jurisdiction to the Penitentiary on December 3, 1862. The Capitular Vicar ordered the examination of Marianna for a new expert opinion and inspection of the bodies on December 27 of the same year; and on March 20, 1863, the defender of the marriage petitioned the Curia to pronounce a sentence concerning the marriage. The Penitentiary, delegated by the Capitular Vicar, on March 28, 1863, summoned the parties to attend the judgment on the 30th of the same month, to hear the terms of the final sentence. Against this decree, Marianna objected, saying that she did not know the judge, and therefore, for the protection of her rights, she presented new arguments. These and other objections were formally raised by Marianna against the delegate and the delegating judge. But the Capitular Vicar, on April 7, rejected the appeal. Therefore, according to what is reported, the

Translated by churchlatin.ai, a product of Boyne Archives

sentence already existed in its entirety from March 28; on that day, it is established that nothing was done in the judgment, except for the citation given in the evening to the parties to suspend the judgment for the 30th, in order to hear the sentence pronounced. And therefore, this sentence was null: 1. because it was never legitimately pronounced; 2. because it has an uncertain date attached to it. On this matter, Pope Boniface should be heard, chapter last, on sentences and judicial matters, in 6: "Although the final sentence, after it has been written, should be pronounced by the judge through the reading of the written text, otherwise it does not deserve to be called a sentence, nor is it necessary to appeal from it..." And the Emperors' Code on sentences should be added.

[*Latin ed. p. 58*]

"In matters of marriage, 58 and interlocutory proceedings, XLV, 6: 'When you say that the president's judgment is invalid because he did not publicly, but in a secret place, and without the presence of his official, pronounce his judgment, it is clear that no prejudice should be drawn from the things decreed by him.'"

"The judgment of the penitentiary was not pronounced on March 30th, according to the notification of the 28th, because on that day, the 30th, the woman appeared, and, having made a protestation, she overturned everything. Finally, it was not pronounced on April 10th, because it is said to have been pronounced on March 28th, and was destined to be published on April 10th, in fraud of the protests and appeals interposed by the woman."

"However, if the judgment was pronounced after March 28th, and before April 10th, there is no reason to renounce it on another ground; because it was pronounced on a weekday. Regarding weekdays, the words of Gregory IX in chapter V on weekdays are noted: 'Although questions should be expedited rather than postponed, the judicial process must nevertheless cease on the days of rest, which are known to be established for the reverence of God, namely... 7 days of the Passion of the Lord, the Resurrection with the seven following... On these solemn days of rest, unless necessity compels or piety suggests, it is fitting to abstain from such matters, so that even with the consent of both parties, neither the process should be held, nor the judgment that happens to be pronounced on such days, although on weekdays that are granted for the necessities of men due to the harvest or the gathering of crops, it may proceed if it is done with the will of the parties.'"

"In the case of the woman, she opposed with all her might, also alleging an exception regarding the weekday."

"1 K Maschat, title on judgment and res judicata, 27, I, 2, n. 6, speaking of the requirements and solemnities of judgment, says: 'Extrinsic solemnities must be observed in the pronouncement of judgment: 1. That the judgment be pronounced with both parties legitimately summoned and present. 2.

Translated by churchlatin.ai, a product of Boyne Archives

That the judgment be pronounced on a non-holiday or legal day to which the summons was made, during the day and not at night... However, the Pope or Prince is not bound by these solemnities, who, with the fullness of power, can..."

"In the year 1863, the Pascha of the Resurrection fell on April 5th."

[*Latin ed. p. 59*]

Concerning marriages, Canon 59 states that a judge, by law, can grant dispensations, provided that he observes those things which, by natural law, are required for the validity of the judgment. Therefore, the Vicar, who was neither a Prince nor the Pope, was bound by these formalities. Consequently, the theologian, after considering the matters discussed, judged that the opinions in question should be defined and condemned as pertaining to the law. Regarding the judge who rendered the prior judgment, the theologian hesitated as to whether he was suitable and competent; for Pope Pius VI, in his Brief to the Bishop of Motula, states: "Indeed, matrimonial causes pertain to ecclesiastical judges who are competent, according to the institution of the sacred canons, and are adapted to the proper order of the ecclesiastical hierarchy. Although one may not doubt the beginning and continuation of the judgment as to its legitimacy, one may doubt the judgment itself, because it was rendered by a delegate of the Capitular Vicar." Authors of great renown hold that a Capitular Vicar cannot, in this way, mandate a judge and jurisdiction. Indeed, Laurelius expressly states: "To pass the exercise of naked jurisdiction to a Vicar... For the Chapter does not abdicate its jurisdiction by appointing a Vicar, but rather that jurisdiction continues to reside habitually and principally with the Chapter... Moreover, Trident, by returning the jurisdiction to the Chapter, did not deprive it, nor diminish, nor alter it, but only prescribed the manner of using that jurisdiction, or of exercising it, namely, through a Vicar chosen by itself, to whom it entrusted the use and exercise thereof." Although others hold otherwise, the theologian preferred the doctrine of Laurelius; to which Ferrari v. Vic. cap., art. 2, n. 18, agrees. In the same author, under the heading "jurisdiction," it is written: "Opposed to this (namely, ordinary) is the vicarious or delegated jurisdiction, which is exercised by someone in the name and on behalf of him who has ordinary jurisdiction. In this sense, only princes and bishops have ordinary jurisdiction."

[*Latin ed. p. 60*]

60. Therefore, the Theologian added, whatever may be the gravity of this opinion, whether the Vicarius Capitularis can delegate to another the examination of the most important matrimonial causes, it is no less true that the judgment of the Court of L. suffers from a defect in another respect, namely, the lack of proper formalities; indeed, all proceedings after the death of the Bishop are null. Therefore, a doubt arose as to whether it was

Translated by churchlatin.ai, a product of Boyne Archives

just to validate the acts, with one of the parties dissenting; or whether the cause should be referred to the ordinary judges for a new examination, or whether the Sacred Congregation itself should undertake a complete examination of the matter. Passing to the second part, the Theologian inquired whether the judgment which was rendered does not rest on the impotence of Nicholas, and whether it does rest on the validity of the marriage contracted by him with Marianna before the Church on August 19, 1858, supported by valid reasons. The order of justice suggests a presumption in favor of the woman, given the disturbance in the proceedings in the Court of L., the undue haste from March 28 to April 10, the new examination of her person, constantly requested by the woman and obstinately denied. Furthermore, it is favorable to her that she has never admitted to having received the seed of a man within her. Indeed, the medical examiners did not clearly express whether, through carnal intercourse, she had ceased to be a virgin, or rather, whether something else had occurred; while she herself always asserted that she had been harmed by the man, but not through carnal intercourse; and even if she had been carnally known, it could still be asked whether it was by her husband, or rather, by another. Moreover, the examination of the man was not only superficially conducted, with the man himself stating this, but the judge did not ask him anything distinctly and clearly; nor were the things presented by the woman or by the witnesses contradicted, namely, that he had sometimes confessed his own impotence, that he had needed medical assistance for his genitals, that he had inflicted violence on the woman several times with his fingers and hands, so that she was subsequently subjected to convulsions and other discomforts. But these things are not such that the man can, from them, be declared to have previously and perpetually renounced marriage; he,

[*Latin ed. p. 61*]

Marriage 61, for he who vehemently denied such impotence, has in his favor not only two opinions fully conforming [to the facts], but also the testimony of four expert physicians, who were appointed by the legitimate judge to examine the body. Although, from what has been said about impotence as a hindrance, an opinion could be given that it does not exist, nevertheless, it seems that no avenue is closed to the unfortunate woman if the matter were to be brought before the Supreme Pontiff with charity, and reduced to the bare fact of consummation. For almost all speak of some difficulty on the part of the man; and since no one has determined the limits of this difficulty, it will not be amiss to inquire whether this difficulty was so great at that time that it was in place of temporary impotence. OPINION OF A CANONIST. This [canonist] indicates that the most famous Constitution of Benedict XIV was completely fulfilled in the completed process; but that the instruction of the Holy Congregation, issued on August 22, 1840, concerning this matter, has given various points to consider. With

Translated by churchlatin.ai, a product of Boyne Archives

this premise, he reduces the entire controversy to three points. 1. Was the marriage in this case not only valid, but also consummated? 2. Is the impotence on the part of the man not real, absolute, and perpetual? And to what extent is this the case? 3. Are there present in this matter just and honest reasons, so that it should be consulted with the Most Holy [authority] for a dispensation from the marriage, which is valid but not consummated? Marriage, by its very nature, is indissoluble, but it is dissolved if there is an impediment to its consummation; but if this impediment is perpetual and incurable in one of the spouses, it is, of course, due to a defect which gives the other a just cause for complaint: "I want to be a mother, I want to have children, and therefore I accepted a husband; but the husband I accepted is of a frigid nature, and is not able to do that for which I accepted him." Text, I, on frigidity and malice. But in order that a marriage rightly contracted may be dissolved because of the man's impotence, clear and conclusive proofs are required, which have been confirmed by the judgment of the Church. To which end, Innocent, in the aforementioned passage, under number 2, states: "And note that three arguments have been found for the proof of frigidity, namely, the appearance..."

[*Latin ed. p. 62*]

62. The marriage of the body, the oath of the seven witnesses of relatives, and the three-year period, but the prudent judge will see to it that only one, or two, or all three are performed. According to the Canonists and the aforementioned tribunals, this form of proof is precisely established and prescribed to resolve questions and causes concerning marriage in a contentious manner, as is the case, and between two oaths, namely that of the husband affirming and that of the wife denying the power and consummation of the conjugal act. To fulfill this form of proof, beginning with the testimony of the seven witnesses proposed by each spouse, all agree concerning the honesty and veracity of each spouse, and also concerning mutual love before the marriage contract; but they also testify that, after the first night, a great aversion arose between them, which they attribute to the woman. Two witnesses, among others, speaking with the husband about this marriage, report having heard him say: "What fault have I if God made me so, and therefore there was no consummation." Therefore, it should be noted that a single and simple confession of the husband, even if simply extrajudicial, is of such weight that it can outweigh the contradictory oath of the husband, or concerning impotence, or concerning the lack of consummation of the marriage, because between two oaths, that which is supported by greater arguments of truth prevails, *Innocent. cap. i de frigid, et malefic. ibique Hostien, in fin. Abbas. n. 5. Ancharan, n. 14. Reiffenst, ad lib. 4 Decret., tit. 15 n. 30, Rota in Pampilonen., Matrimonii, 23 iulii 1/22 § Accedente, cor. Lancetta - ibi: «Accedente praesertim iuramento Mulieris etc. «quin aliqua vis fieri valeat in contrario iuramento Michaelis; « nam viget contra ipsum

Translated by churchlatin.ai, a product of Boyne Archives

praecedens confessio extraiudicialis « ideoque in concursus praeferri debet illud mulieris aliis admi« niculis et probationibus suffultum ». But in the case where there are several extrajudicial confessions of the husband made to trustworthy witnesses, and judicial ones made by the husband in his depositions, he says: "On the first wedding night, I demanded the conjugal duty from the woman, and I tried to consummate..."

[*Latin ed. p. 63*]

"Regarding the marriage, she was readily willing to enter into it; at first, I exerted myself, but I did not consummate the marriage; and I can attest that a part of the seed penetrated the woman, or, to clarify the matter better, I believe that this occurred." On the second night, the woman showed herself to be unwell (perhaps because she was being touched with the fingers), and therefore the man doubted that the woman's reluctance, who had experienced fruitless attempts the previous night, was the reason why he could not consummate the marriage. He sought the advice of physicians, but he never applied the remedies that the physicians considered appropriate. To all of this must be added the confession of the man, written by the hand of a public Notary, regarding his own impotence; although he later attempted to retract it in vain. Regarding the other requirement stipulated by the sacred canons, namely, the examination of the body, the physicians reported that the man's genitals were free from any visible defect, and therefore the man was considered to be potent. However, this report is flawed in relation to the instruction of the Holy Congregation of the Council of 1840, already cited, because the examination of the body was not conducted separately, as the instruction requires, but was completed in a general manner. Furthermore, it must be remembered that all canonists admit to two kinds of impotence, one arising from an external and visible defect, and the other from an internal and invisible defect. Gonzalez, in Chapter 7 of the aforementioned title, states: "The sign of impotence, whether arising from a natural defect, may be apparent, or it may not be apparent." And the Holy Congregation of the Council, in Naples, concerning the nullity or dispensation of marriage, on July 5, 1862, § Verum: "Furthermore, it is known that no argument can be deduced from the external conformation, because it is possible that an internal defect exists which impedes coitus." Therefore, since the provisions of the canons do not concern impotence arising from an external defect, which can be ascertained by the eyes of experts, but are entirely devoted to investigating and determining the canonical remedy for impotence arising from a double internal and invisible defect, namely, frigidity proceeding from an equally invisible and demonic operation, the Code of Canon Law has a special title dedicated to the frigid and the afflicted by witchcraft. In

Translated by churchlatin.ai, a product of Boyne Archives

which, to a great extent, it...

[*Latin ed. p. 64*]

64. Marriages may exist due to impotence, whether it be internal and invisible, not perceptible to the senses, and which cannot be recognized or proven by any external evidence, as is clear from the text in Chapter "Laudabilem" of the same work, where it states: "If frigidity cannot first be proven." In this case, the wife alone is the sole witness to herself; for she always accuses the husband of an internal defect, namely, an imperfect and flaccid erection, and never of an external and visible defect. To demonstrate impotence due to an internal defect, it suffices that the erection be either diminished or not permanent, as stated by Zacchia, book 1, title 1, question 1, number 22: "Or, even if it is erected, it lasts for a very short time, but immediately becomes flaccid." The Rota, in its decision 11, book 4, "ad ornat." Cardinal, of Lucca, volume 2, number 11, states: "As long as such an erection is not sufficient and permanent; but instantaneous, weak, and completely flaccid," and number 14: "Indeed, some shadow of an erection... does not exclude the perpetuity, nor the evidence of an impediment, when such an erection is not sufficient and permanent, but instantaneous, weak, and completely flaccid; this, however, is said to be evident impotence." The experts in Rome, appointed for this purpose, determined that the aforementioned Nicholas was impotent, following this doctrine, since it was concluded: "This concerns a nerve and dynamic impotence which can be properly linked to a normal physical state." And therefore, although the first physicians appointed by the Bishop reported that the woman was not a virgin, it is clear that her virginity was lost not through the consummation of the marriage, but through the violence of the husband's fingers, which caused the woman to contract a disease. Therefore, the marriage in question can easily be declared null, because it was not consummated due to Nicholas's nerve or dynamic impotence, which the experts in Rome have judged to be permanent, and which is now exacerbated by age. Therefore, according to the opinion in Sperell, decision 141, number 35, it can be concluded: "But if it appears that the impediment of the husband is permanent and incurable, then the judgment regarding the dissolution of the marriage can be rendered without delay. However, in order to proceed more safely, the Canonist says, it is permissible to..."

[*Latin ed. p. 65*]

Marriage 65 obtained from the Most Sacred Prince a dispensation from a marriage that was valid but not consummated, as if it were a most urgent petition; and there are reasons for this. The first reason is the impotence of the man, as Cosci, *De Separ.*, book 1, chapter 16, paragraph 1, and book 3, chapter 2, paragraph 386, states: "When the impotence of a man is presented as a reason and cause for a dispensation, it does not require

Translated by churchlatin.ai, a product of Boyne Archives

certain and conclusive proof, but it is sufficient that the said impotence be so probable that the Supreme Pontiff may consider it to be true and be moved to grant the dispensation." And the esteemed Cardinal De Luca, *De Matrim.*, book 2, paragraph 5, says: "Truly and properly, we are in a case of formal dispensation from a marriage that is otherwise firm and indissoluble; but when there are clear indications of a natural impediment, it seems rather a matter of justice to administer prudentially, under a more honorable title, in the manner of a prince, so that the rights of both parties would be respected." The second reason is aversion of the souls; the third reason is the danger to the body of the woman, and to the soul of both spouses.

OBSERVATIONS OF THE DEFENDER OF MARRIAGE. He considered it insane to pursue such a judgment, because it lacks a basis and foundation. Indeed, it is a fact that these spouses have several times performed the conjugal act, and therefore the marriage is not only valid but also consummated. However, the man was declared unfit for intercourse by the first experts appointed by the Bishop, and the woman has lost her virginity. Given these circumstances, what can this Tribunal declare after the passage of thirteen years, and after the marriage has been confirmed by four judicial sentences? Nor is it understood what the Professors of Rome intend when they ask, after thirteen years, whether the marriage has been consummated: they should rather expend their efforts on determining whether that man is absolutely and perpetually impotent, and not whether the marriage has been consummated. If the man is potent, the Holy Congregation should declare this marriage invalid; if, on the other hand, the impotence existed before...

[*Latin ed. p. 66*]

Marriage 66: If absolute and perpetual impotence is found to exist, the aforementioned sentence must be revoked. Then the question of consummation or lack of consummation is raised, because only the revocation of the sentence was requested. Furthermore, in this case, the process lacks the precise determination of whether or not consummation occurred; and the process is deficient regarding the just causes for obtaining a dispensation from the pretended marriage, whether it be valid and unconsummated. Moreover, while the Roman physicians are compelled to admit the presence of all the integral parts of the body, along with the most expert, they absurdly claim that an internal defect, or the appearance of impotence, could have been present, from which they argue that the marriage was not duly consummated. But this is merely a hypothesis, which contradicts the facts; and since the man presents no external sign of impotence, the woman is no longer a virgin. Therefore, after all these considerations, the defender of the adulterous woman concluded that her petition should not be accepted, and that the conforming sentences should be confirmed. With

Translated by churchlatin.ai, a product of Boyne Archives

all of this completed, the following question was to be resolved: 1. Whether the sentence of the Court, both L and H, should be confirmed or infirm in this case. RESOLUTION. The Sacred Congregation, after deliberation on the matter, responded on July 25, 1874: The evidence is to be extended and supplemented according to the instructions. PROCEEDINGS IN THE CASE. The intention of the Congregation, when it prolonged the case, was to complete the process regarding the lack of consummation of the marriage, according to the instructions to be given. The Bishop prepared a new process and transmitted the records to the Sacred Congregation; which...

[*Latin ed. p. 67*]

Marriage 67: Theologians and Defenders were summoned to express their opinions on the matter. THEOLOGIAN'S OPINION. The Theologian stated that the husband's impotence could not be definitively proven; therefore, the judgments of the first and second grades of the courts should be considered morally true, even if they could not be confirmed, because they were not tainted by a flaw of nullity. Consequently, the question arose as to whether there was a remedy for the unfortunate woman who, with a stubborn mind and heart, had declared the nullity of her marriage, had separated from her husband, and had given herself to another man, and had conceived a child from him. Although the husband's impotence had been asserted by four physicians, more evidence emerged from the entire series of events that did not indicate the consummation of the marriage. Then, the Sacred Congregation, with the authority of the Senate, rather than the jurisdiction of the Tribunal, ordered that, taking into account such evidence, a new process be conducted according to the instructions by the L. Court, not regarding the nullity, but regarding the lack of consummation of the marriage. After the Theologian had presented his reasons for a new process, the object of which was no longer the nullity of the marriage due to the husband's impotence, but the lack of consummation, and in order to obtain a dispensation, he argued that he had to prove the lack of consummation with various arguments. First, he stated that the woman, after a legitimate judgment, with a properly constituted defender and who had not neglected his duty, consistently asserted that her marriage with Nicholas had never been consummated. Furthermore, it should not be overlooked that the husband, albeit reluctantly and timidly, using the same judicial procedure, testified that he had consented to the woman, saying: "I tried for the first time; but I did not fully consummate it; and I can affirm that a part of the seed entered the woman's womb; and to better clarify the truth, I believe this to be so. The second and third times, the same thing happened. On the second night of marriage, it was as if it were the first night; therefore,

Translated by churchlatin.ai, a product of Boyne Archives

I believe that, due to the woman's opposition, an erection did not occur."

[*Latin ed. p. 68*]

68. Concerning Marriage. The husband, urged by the defender of the marriage, inquired why he had consulted physicians, unaware of his impotence. He replied that he had sought them out not because he was aware of his impotence, but in order to discover the cause by which he was unable to fully consummate the marriage. The physicians responded that this occurred due to a certain natural shame. Furthermore, in the matter in which collusion is suspected, or because a woman, with steadfast will, has seduced a man before the tribunals, from which the victorious party has withdrawn, having vehemently opposed the woman, and yet, with renewed vigor, denies his impotence. A serious difficulty arises from the sworn testimony of four physicians who testified that Marianna was not a virgin. However, the Professors of Rome respond, saying that certain indications of corruption, which are reported by expert witnesses, cannot indeed be explained by the consummation of the marriage, which should precede an examination for at least thirty months; but rather, they may entirely arise from some disease or from some more recent dishonor of the woman. And the woman appears to be to be heard when she sees the cause of this matter, namely, the vexations inflicted upon her by the husband in her pudenda, by the middle finger, when she was unable to consummate [the marriage], from which the woman herself was afflicted for four months. There are trustworthy witnesses to these vexations, of whom the husband himself had recounted, saying: "I have sometimes used my fingers to remove an obstacle to the consummation of the marriage." Nor should the exception be passed over in silence, which the woman presented to the testimony of the four experts, saying that this examination had been conducted with little honesty and conscience, and that she had requested an examination before the Vicario Capitulari for a new examination of the body; but she was not heard. Marianna added that the examination of her body had been performed by a surgeon, who had treated Nicholas before the marriage in order to restore his potency, and that three others believed this. However, it was of great importance for the surgeon to conceal the defloration in order to protect his reputation.

[*Latin ed. p. 69*]

Marriage 69. The Theologian, having considered the testimonies of numerous witnesses, concluded that the marriage in question had never been consummated; neither during the time when the spouses lived together, nor afterward, and that there were numerous reasons for which a dispensation could be granted. NEW OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. To remove all suspicion of impotence, the defender presented the opinions of Doctors, weighty from the earliest ages of jurispru-

Translated by churchlatin.ai, a product of Boyne Archives

dence and medicine, down to our own times. For these Doctors do not admit of absolute, perpetual impotence, which would dissolve the marriage, except after the beginning of coitus. Albert the Great, as related by Sánchez in his treatise on marriage, book 5, dispute 9, number 24; Duvergier, legal medicine, volume 1, chapter 4, page 338; Laura, legal medicine, part 2, section 3. But even if the impotence of the husband, if any existed according to the judgment of experts, had been temporary, relative, and curable with medicines, so that the complaint of the nullity of the marriage would be entirely to be rejected, moreover, even from that very act of copulation with his wife, a true act sufficient for the consummation of the marriage took place, from which a dispensation from a valid, but unconsummated, marriage is entirely equally excluded. This is proven by the loss of virginity after the marriage, and by the attempts made on both sides to consummate the marriage. For each spouse admits that the marriage was consummated, at least in part. From this it follows that, even if the marital seed was not entirely, yet at least a part of it was ejaculated within the female organ, as Sánchez states in his treatise on marriage, book 1, dispute 12, number 10: "Nor is it to be considered that the marriage is null if the man cannot pour the entire seed within the vessel, but only a part; because that part of the seed, received within the vessel, is sufficient for the consummation of the marriage, and to make the spouses one flesh." Individually, having refuted the witnesses, he proved the consummation of the marriage; and therefore, he said, no dispensation can be granted, for any other reason; as Coski states, on separations, book 1.

[*Latin ed. p. 70*]

In *Matrimonii* chapter 70, paragraph 16, number jj, it is written: "A consummated marriage signifies the union of Christ with the Church through the Incarnate Word, or the hypostatic union; and this union is entirely indissoluble, as stated in chapter 5, concerning bigamy, because the Word, once assumed, was never abandoned... Therefore, a consummated marriage cannot be dissolved by any earthly power, because it was elevated by the Lord Jesus Christ to represent the wondrous and indissoluble union of the Divine Word with humanity; and since the marriage bond, by this very fact, represents this union as the effect of the sacrament, it follows that, through this bond which follows the sacrament, the marriage becomes indissoluble. With these and other considerations, the purpose was to resolve the doubt. Whether the opinion of the Curia, both in L and in H, should be confirmed in this case. RESOLUTION. The Sacred Congregation, on June 30, 1877, after discussion and reformulation of the doubt: Whether it is necessary to consult the Most Holy Father for a dispensation from a marriage that is valid but not consummated in this case, responded: Affirmative. On September 22, 1877, the following question was presented for discussion with the usual formula of doubt: Whether one should adhere to or depart

Translated by churchlatin.ai, a product of Boyne Archives

from the decisions in this case. To this doubt, the Sacred Congregation responded on the same day: In the decisions. FROM WHICH YOU MAY GATHER: I. That, in order to properly carry out marriage proceedings, it is necessary to observe not only the Constitution *Dei miseratione* and the instructions of the Sacred Congregation, but also other matters that pertain to the intrinsic form of the judgment and the solemnities required for the validity of the sentence.

[*Latin ed. p. 71*]

Marriage 71 II. Regarding the internal form of the judgment, it is first required that the judge be competent, that is, possessing certain jurisdiction; regarding the external formalities of law, it is required that the definitive sentence be pronounced by the judge publicly, not in a secret place, with both parties legitimately summoned and present, not on a holiday, nor on any other day for which the summons was made. III. If all of these, both internal and external requirements, are lacking, then not only is there no sentence, but even the name of a sentence is absent, from which one ought to appeal, and which cannot carry any prejudice. IV. In the matter at hand, many things were lacking, both regarding the internal and the external requirements; for which reason, the sentences of the Curia could be considered as having been duly pronounced. V. It can be doubted whether a judge can be delegated by the Vicar Capitular to hear matrimonial causes, since, according to the opinion of some Most Reverend Doctors, the power passes to the Vicar Capitular, while the jurisdiction remains with the Chapter. VI. And in truth, Trent had not taken away, diminished, or altered the jurisdiction devolved to the Vicar Capitular; but only prescribed the manner in which that jurisdiction should be used, or exercised through the Vicar chosen by it. VII. The marriage must remain valid, and it cannot be said to have been consummated, even though there was penetration, unless there was also the commingling of seed; which, if present, even in a small quantity, renders the marriage consummated. VIII. Greater proofs are required to declare a marriage null, through the course of justice, than are required to obtain the grace of a dispensation; therefore, it is more difficult to prove the impediment of impotence, in order to renounce marriage through justice, than to prove the lack of consummation of the marriage, in order to obtain the grace of a dispensation. IX. The lack of consummation of the marriage is demonstrated by the oath of the spouses, and by the testimony of a seventh witness, and by the experiment of virginity.

[*Latin ed. p. 72*]

72. The age of marriage: which, however, is usually proven not by a fixed form, but by demonstration; so that, if one or the other proof is lacking, recourse is had to a dispensation, provided that there is a moral certainty of the lack of consummation. REGARDING ABSOLUTION, INSTI-

Translated by churchlatin.ai, a product of Boyne Archives

TUTION, AND FRUITS, THROUGH BRIEF PRAYERS. September 22, 1877. Summary of the case. Among other Canonries existing in the City of N., there is one whose patronage belongs to the Most Serene Archduchess of Etruria. The Subalpine Government authorities appointed the Priest F. to that position by decree of July 27, 1862. This priest, although he could not obtain ecclesiastical institution, due to the opposition of the Curia and the majority of the Chapter, nevertheless entered into possession of the benefice and received its revenues. Now, spurred by the dictates of conscience, he requests from the Apostolic See: 1. Absolution from the censures into which he fell, not out of bad will, as he asserts. 2. Absolution from the restitution of the fruits which he received without the Church's concession. 3. That the faculty be granted to him to receive canonical institution, or at least 4. to receive in the future the revenues of the same canonry. The Holy Congregation wished to be informed by the Ordinary regarding the reputation and morals of the aforementioned priest, and the reason why the majority of the Chapter opposed the priest's institution: whether, without the assembly of the people or scandal, the canonical institution could be granted to the aforementioned priest. The Ordinary reported that the priest F. did not enjoy a good reputation among the neighbors; and that, because of his gravity, which was considered ecclesiastical,

[*Latin ed. p. 73*]

73. Concerning absolution, institution, and the fruits [of office], he entirely lacked them; both in the manner of life he led, and in the vestments he habitually wore. To these must be added the manner of conduct contrary to the Holy Canons, by which he was able to receive the canonical revenues of the prebend, and also the foundation charter of the Canonicate, which stipulates that the holder must be a nobleman, adorned with a laurel, and approved for hearing confessions. Such requirements are entirely absent in this man; and considering all these things, the greater and healthier part of the Chapter entirely rejected him. Therefore, the Ordinary proceeded, not without scandal, and with the admiration of the people and the clergy, to grant him a canonical institution. A Synopsis of the Arguments. And first, it seemed that absolution from the censures pertaining to this case should not be granted to the orator. For such absolution is given when there is manifest amendment in him who had previously committed a fault (can. j, c. 23, q. 4). Indeed, the aforementioned priest did not give signs of amendment. For he always retained the possession of the benefice he had acquired improperly; and moreover, his manner of life is entirely lax and unbecoming of an ecclesiastical man. On the contrary, it could be observed that the orator showed a more than sufficient willingness to do penance, since he was greatly concerned about settling the matter with ecclesiastical authority, and he approached it repeatedly, and sought in every way to restore peace to his troubled conscience. Furthermore, the Bishop's favorable opinion

Translated by churchlatin.ai, a product of Boyne Archives

regarding the granting of absolution to the orator from the censures is something that is highly considered by the Holy Congregation. However, concerning absolution from the restitution of the fruits received, it did not seem that it should be granted. For, lest he should appear to be acting in bad faith, it would seem necessary to demand that he restore them along with the thing itself, according to the prescription of L. 22, Code of Civil Law. On the other hand, it can be considered that, in the case of restitution, any cause, even a rash and brutal one,

[*Latin ed. p. 74*]

74. The absolution, institution, and fruits, and whatever opportunity for possessing [them], are excused according to what is handed down by Bald, in *Liber Extra*, n. 3, chapter on usurpation. Also, in *Decisum* 2, 1, 1, n. 7, Menoch, on presumptions, 130, n. j, book 3, Rota, *Decisum* 320, n. 2, *Decisum* 528, n. 7, part 2, *Decisum* 608, n. 1, and *Decisum* 622, n. 4, *rec.* Secondly, if the priest F. is not provided with other ecclesiastical benefices and does not enjoy any property of his family, he is in a condition where it is impossible for him to restore the fruits received. However, restitution should not be demanded from one who cannot provide it, since the evident mark of poverty excuses him. Therefore, absolution from the restitution of the fruits received should be granted to him, according to the Bishop's judgment. Furthermore, I do not believe that the ecclesiastical institution should be conferred upon the aforementioned priest: 1) because he was presented by an illegitimate patron; 2) because he lacks the requisites desired by the testator. "Finally, the will of the deceased must be preserved in all ways." Canon, last. *Causae* 13, q. 2. Clementine. Because it happens, concerning religious houses, 3. Finally, because, according to the Bishop's report, the orator's reputation and conduct do not inspire any favor towards him, and other prelates have adhered to this opinion, all expressing a contrary opinion with one voice. On the other hand, it can be considered that the canonry, by which the orator benefits, is one of those suppressed by a rapacious government, and therefore, little insistence should be placed on the qualities required by the testator. Indeed, the increase of the number of canons of F. would undoubtedly increase the service to the Church, which is especially important in calamitous times. Finally, regarding the fourth point, it does not seem that he should be granted the faculty of receiving fruits in the future: 1) because he is in every way destitute; 2) because, if a concession were granted in his favor, it would have to be said that the unjust retention of the benefice would have been most beneficial to him. Moreover, it is established in law that no one should benefit from his own injustice. On the contrary, it can be observed that, from what has been said...

[*Latin ed. p. 75*]

75. The prebend, lacking the benefits of absolution, institution, and

Translated by churchlatin.ai, a product of Boyne Archives

canonical fruits, which it possesses in the present circumstances, requires sustenance for the priest's life; therefore, if the priest F. were compelled to relinquish this benefice, it would revert to the demesne. Furthermore, the difficulty of obtaining a renunciation from the same priest must not be overlooked, both due to the poverty in which he is situated, and as the Most Reverend Archbishop observes, due to the ambitious desire that presses upon him to sit upon canonical chairs. However, since almost the same reasons make it equally difficult for the priest F. to pay two out of three parts of the revenues with the favor of the Church, the Archbishop's opinion was that the same priest should be allowed to receive the revenues of the prebend which he possesses, for the sustenance of his life. Therefore, having briefly considered these matters on both sides, it was left to the wise judgment of the Most Eminent Cardinals to decide how such requests should be granted. The Sacred Congregation, after carefully considering the matter, responded on September 22, 1877: "Regarding the institution, negatively; regarding the rest, I decree that, first, true penance and repentance must be demonstrated, with prior spiritual exercises in place and for the time determined by the Archbishop, for the granting of absolution from censures and the remission of fruits received, considering the inability to restore them. Furthermore, for the granting of the ability to receive in the future the fruits of the prebend as an alms, with the obligation of paying a certain portion, to be determined at the prudent discretion of the Archbishop and to be paid by the Archbishop for the Church, under the penalty of losing this grant if he does not conform to and maintain the norms of ecclesiastical discipline, and if he does not fulfill his promises to the Holy See."

THEREFORE, IT IS UNDERSTOOD: I. That the testaments were entirely preserved by the Apostolic See, because, as sacred documents, the will of the testators is considered, in all respects, regarding pious causes.

[*Latin ed. p. 76*]

Concerning Absolution, 76, the institution and fruits thereof: It was not considered a canonically established institution in this matter, namely, one that would contradict the testator's will, but rather, the fruits were considered to have been truly remitted to the priest through grace, fruits which had already been improperly received, and he was thereby enabled to receive fruits in the future, perhaps, under the title of circumstances and alms.

1. OF PAROCHIAL RIGHTS. Dated September 22, 1877. Summary of the case. On July 24, 1875, this question was proposed under the formula of doubt: Whether and how the opinion of the Mediolanensis Court should be confirmed or rejected in this case. To this doubt, the Sacred Congregation considered it fitting to respond: The sentences of the first and second grades are to be reformed. Chaplains have the right to exercise the care

Translated by churchlatin.ai, a product of Boyne Archives

of souls together with the Rector, and dependently on him, according to the ordination proposed by the Bishop, to be transmitted to the Sacred Congregation.

2. The Prefect, in order to carry out the will of the Sacred Congregation, appointed men skilled in Canon Law; who, with the interested parties present, and after considering their reasons and arguments,

It is worth remembering that this question was proposed through summary petitions; which formula, used in the Sacred Congregation, indicates that it is not about a formal doubt to be formally resolved, but about petitions presented to the Holy See to obtain grace. Therefore, after setting aside almost all legal discussion, while preserving the testator's law, grace was granted, from the fullness of power and from the benignity of the Holy Mother Church, but with certain conditions attached, which, if not fulfilled, render the grant null and void. See this question reported in Volume IX, page 116 of this journal, so that you may better understand all the circumstances of the case. Compare also the question reported in Volume IX, page 281, and another with an appendix, page 604 and following.

[*Latin ed. p. 77*]

11. The rights of the parish priests indicate the norm and the purpose of this dependence. These norms are as follows:

1. Since the Rural Rector is the head of his Church, he must be given the first place in every sacred function. The coadjutors and chaplains should sit next to him, according to the ancient institution.

2. Because the coadjutors also have the right, but by law, the faculty of exercising the care of souls in the parish, that is, commonly with the Rector, their integral and natural attributions must remain fully intact, which the Rector may neither disturb nor diminish.

3. The sacred functions customarily performed in the parish, both on feast days, or Sundays, and on days other than feasts, are to be performed by the Rector and the coadjutors in turn, as has been maintained up to now. The Rector, to whom, according to custom, the coadjutors are accustomed to performing liturgical functions, should always be free, when a legitimate reason presents itself, to perform them himself, when he makes use of his right, and should warn the coadjutor, to whom the sacred rite would otherwise be assigned.

4. But besides the functions which he customarily performs, all other solemn functions are reserved to the Rector, that is, those with a choir, clergy, and organ, which occur during the year, either by custom of the Church, or by a public vow, or which have been requested by the faithful; the coadjutors retaining the ordinary functions, which we call "from the altar," such as baptisms, funerals, and the administration of the sacraments to the sick.

Translated by churchlatin.ai, a product of Boyne Archives

5. At least two of the coadjutors should assist the Rector in a solemn celebration, while the third remains free for any spiritual needs of the faithful that may arise. If the Rector does not perform a function that has been reserved to him in some way, a coadjutor, who is performing the weekly duties, should take his place, with the emoluments offered by the faithful being divided equally between them, if any are offered.

6. The burden of preaching should be common to the Rector and the coadjutors, so that the latter may preach in turn, and only with the Rector's warning; and they should assist him in catecheses.

[*Latin ed. p. 78*]

78. Concerning Parochial Rights: "The application of the Sacred [Sacrament] for the benefit of the people is the responsibility of the Pastor, on the days prescribed by the Church.

7. Furthermore, the less solemn functions, or those pertaining to vestments, are to be distributed among the Coadjutors in such a way that each performs them throughout the week: if the designated Coadjutor is hindered, the one who will perform the duty in the following week shall take his place.

8. Although the Coadjutors have assumed a part of the pastoral care, so that they may strive for the salvation of the entire Parish together with the Pastor, nevertheless, for the better benefit of the faithful, it is a salutary custom to divide the parish into three regions, assigning each to a Coadjutor: each of these, within the region assigned to him, shall especially care for the sick, distribute alms to the poor residing there, and diligently watch over the well-being of the inhabitants. Also, each Coadjutor shall assist at marriages that, by reason of their solemnity, do not pertain to the Pastor, provided the bride is from his region; if he is hindered, another shall take his place from the following week. For internal reasons requiring delegation, no external person shall be appointed to this duty, without the knowledge of the Pastor. Moreover, it should always be permissible for the Pastor to personally assist at even the less solemn marriages, provided that the offerings received for these marriages are placed in the collection box of the Coadjutors.

9. Offerings of any kind made by the faithful to the Coadjutor, by reason of some spiritual function, whether he exercises it throughout the week or acts in place of the Pastor, shall be placed in the collection box, with the exception of the alms for the Mass, which shall be given to the celebrant; these offerings shall be divided among the Coadjutors every three months.

10. When departing from the parish, whether it be the Pastor or any of the Coadjutors, let him remember what has been so salutarily established, both by the Tridentine Council and by Our Constitutions, both concerning the time of absence of the beneficed clergy and concerning the care of

Translated by churchlatin.ai, a product of Boyne Archives

souls."

[*Latin ed. p. 79*]

Regarding parochial rights 79: "From their own seat, and also concerning the service of the Church, they are to be present during absences; and therefore, whether they are Coadjutors, or Assistants to the Prefect, they are to admonish the Prefect or their colleagues about their departure, and to arrange with each other so that, meanwhile, some of them are present to the faithful in spiritual matters." However, this decree gave the opportunity to the Chaplains and the Prefect to defend their own rights, which they feared would be harmed by the new proposed norms. Therefore, the Chaplains now assert that their parochial right has been recognized, together with the Prefect; and that their dependence is not to be understood in a total and strict sense; but that, with regard to certain acts of courtesy towards the Prefect, who is equal to them in the habitual exercise of the care, and is considered first among equals in law. This interpretation did not displease the Prefect; and he immediately urged the Sacred Congregation to carefully examine the matter, so that the right of the Rector would not be harmed, but the dependence of the Coadjutors, wisely admitted, would be maintained. A concise discussion. THE RIGHTS OF THE PREFECT. The Cardinals strongly requested that the Prefect take action to ensure that the norms presented by the Ordinary did not grant any concessions to the Coadjutors that would be detrimental to the parochial right. For, in the aforementioned declaration, it was wisely established that the Chaplains exercise their ministry under the dependence of the same Prefect. To support this interpretation, he stated that, first of all, there is the Bull of Pope Alexander VI concerning the erection of three chaplaincies; from which Bull, the Chaplains are obliged to attend the canonical hours together with the Prefect in the same church, and are obliged to exercise the care of the souls of the parishioners, and to serve themselves, and not through substitutes. Furthermore, he noted that the Chaplains themselves are constantly present in the acts of the episcopal curia, and in the

[*Latin ed. p. 80*]

80 The rights of parochial vicars were established by the Apostolic Visitation of 1581 as Assistant Vicars to the Rector Prefect. To this must be added that, when chaplaincies have been granted by the Supreme Pontiffs, in the granting bulls, the obligation of the vicars has always been designated with the words: "Whoever holds this chaplaincy for the time being, to him the burden is entrusted of assisting the Rector of said Church (Prefecture) for the time being, in the exercise of the care of souls of the chosen sons of that parish." From this, the Prefect argues that the Holy See has assigned to the vicars the actual care, or the right only to exercise the care of souls, and not the habitual care of the parish. Thus, no outsider can

Translated by churchlatin.ai, a product of Boyne Archives

impede them from exercising such a ministry; a right which they would not have without the consent of the Prefect, who has assistant vicars in matters pertaining to the care of souls. *Ferrar. V. Coadiutor, n. 28, 2Ç.* RIGHTS OF VICARS. Whoever reads the bull of Alexander VI will easily perceive that the words refer to all the offices that concern the salvation of souls, together with the Prefect. Thus, the Apostolic Visitor, Charles, pronounced judgment with these words: "The vicars are three assistant vicars, who, together with the Prefect, are bound both to personal residence, and to the recitation of the canonical hours in common, and also to the care of the souls of the parishioners." Another argument in favor of the vicars is found in the words of the founding bull: that they must serve not by themselves, but by legitimate substitutes, in the absence of a legitimate impediment. From this, it is inferred that, if an impediment were present, they could serve even through other substitutes. However, from the acts of the Curia, it cannot be gathered that, as the Prefect asserts, the vicars were named Assistant Vicars to the Rector Prefect. But the majority of the granting bulls repeat the words of the founding brief of these benefices: for three perpetual vicars, who are bound to attend the canonical hours together with the Prefect, to reside personally, and to exercise the care of the souls of the parishioners. The Prefect indicates...

[*Latin ed. p. 81*]

Regarding parochial rights, 81. It is true that various Supreme Pontiffs, when conferring these benefits, have often modified the formulas of collation. However, the Chaplains say that this has no value, because the Rectors have not provided the Roman Pontiffs with an exact account of the offices pertaining to some of these benefits that are conferred; and also, because in subsequent collations, the formula has been taken from the foundation document itself. But if the Roman Pontiffs had truly intended to authoritatively derogate from the foundation document, they would not have returned to the formulas customary to it. Nor does the office that is said to be incumbent upon the Chaplains in the resolution of the Sacred Congregation of the Council, namely that they must exercise care depending on the Rector; for it is added according to the ordination, because the method and the limits of dependence must be established by the Bishop and approved by the Sacred Congregation of the Council. It must be added that the Sacred Congregation of the Council has confirmed the judgment of the first and second grades, reforming them only with regard to the Superior, who must establish the norms by which the exercise of justice and the dependence are to be regulated, in order to avoid questions. Furthermore, the Alexandrian Bull, properly interpreted, indicates that the care of souls, together with the Rector, pertains reciprocally and equally to the Curates. Therefore, the full right of parochiality, by which one canonically assists at marriages, by the force of the foundation, pertains equally to the Rector and to the titular

Translated by churchlatin.ai, a product of Boyne Archives

Coadjutors.

1. With these things noted, the purpose was to explain: 1. It often happens that, according to ancient institutions, the care of souls is found to belong to several, especially in the Chapters of Canons. However, adhering to the law of the Council of Trent, the Sacred Congregation of the Council, when the opportunity arose, has held that it should belong to only one, unless the particular laws of the foundation clearly do not prohibit it. And this practice is more suited to the institution of the Church. We read in Cap. Sicut 21, quaest. 2: "As in each Church there must be one priest, so also the bride or wife of that priest cannot be divided among several priests, but must have only one priest, who will govern her chastely and sincerely." Nor should it be forgotten that this reasoning can prevent many questions regarding the validity of marriages. Acts, vol. XI, p. CXXII. 6.

[*Latin ed. p. 82*]

Regarding 82 Parochial Matters: A Doubt. Whether and how the ordinations proposed by the Bishop should be approved in this case. RESOLUTION. The Sacred Congregation of the Council, on September 21, 1877, after deliberation, responded: Affirmative in all respects.

1. CONCURRENCE FOR OFFERING THEOLOGICAL DOCTRINE. On September 2, December 16, 1876, January 27, July 28, and December 15, 187?, a concurrence was held.

PRELIMINARY NOTE. In the diocese of Summa, a particular custom prevails of holding a concurrence, both for offering the theological doctrine and for offering the sacrament of penance. Indeed, when the Chapter is convened in the chapter hall, where the Bishop and the Chancellor are present, a book is displayed to the person offering the doctrine, which is usually the *Summa Theologica* of St. Thomas. The person offering the doctrine then marks a passage in the book, which is subsequently opened at the last page, which has been perforated; and from the matter discussed on the two pages thus opened, the person offering the doctrine formulates a proposition or thesis, which is transcribed by the Chancellor and affixed to the doors of the Church. Then, the person offering the doctrine remains enclosed in a separate chamber for twenty-four hours, after which he proceeds to the Cathedral, where he appears before the Chapter.

1. Some may perhaps doubt that the Sacred Congregation of the Council, in approving these ordinations, which determine a manner of living, has somewhat infringed upon the right of the Parish Priest. Thus, in this case, the full practice of inducing unity in the care of souls has not been followed. We implore the readers to recall the civil laws by which pious causes are vexed; especially with regard to Parishes; and they will understand that the rigor of the law must sometimes yield to the rules of prudence, so that the goods of the Church may be, as far as possible, removed from the clutches

Translated by churchlatin.ai, a product of Boyne Archives

of the Treasury.

[*Latin ed. p. 83*]

The procedure for presenting oneself for the theological chair and for the Bishop involves the following: The candidate recites a dissertation on the proposed thesis and undertakes to defend it against other candidates, who may argue against him for the space of one hour. The following day, they again assemble in the Chapter, together with the Bishop and the Chancellor, in the Chapter hall. The Missal, as before, is presented, and the candidate pricks it with a needle and selects a passage from the Gospels upon which he will compose a commentary. After this, he is again confined for twenty-four hours in a separate chamber, from which he requests the Cathedral, and, having ascended the platform, he offers a vigil in prayer. Once all of these things have been completed for each candidate, the Chapter is finally convened to cast its vote, with each canon swearing that he will give his vote according to his conscience. The vote of the Chapter is advisory; the vote of the Bishop is decisive. These things all preceded what follows, so that they might be more easily understood. A summary of the facts. Having announced the vacancy for the theological chair, the Bishop, following the footsteps of the Council of Trent and the Apostolic Constitutions, convened a competition through public edicts, which he ordered to be affixed and published in the customary places, so that all might be aware of it for a period of sixty days, from the day of affixation, namely, from the eleventh day of the month of March, 1875. Only two priests, who had been awarded a theological doctorate, Michael P... and John C..., submitted their names to the list of candidates. After deliberation, the priest John was deemed worthy of the position, and was chosen by the Bishop, after hearing the report of the Chapter, to be appointed a canon. Having learned of this, Michael, considering himself aggrieved, and after first warning the Bishop, presented a petition to the Holy Congregation, requesting that John's election be declared invalid and of no effect, due to the following irregularities. Firstly, John did not submit his name to the competition, nor did he present the required documents within the allotted time. Indeed, according to the edicts, the candidates could submit their names until the ninth of May, inclusive, which day, according to custom, should expire at sunset. However, John submitted his application at approximately eight o'clock...

[*Latin ed. p. 84*]

84. The gathering for the presentation of the theological thesis, which was scheduled for the afternoon, having already passed the appointed deadline, did not take place in the Curia, but in the house of the Chancellor, where the name of the candidate could not be announced.

2. Because John, contrary to the Constitution of Gregory XV, *Suprema*, of November 5, 1622, which mandates that only one topic be chosen, twice

Translated by churchlatin.ai, a product of Boyne Archives

used pins to mark passages in the book in order to select the thesis to be discussed. For, having learned that the first topic presented to him was difficult to treat, he was again permitted to use the pins, and thus to obtain an easier topic.

3. Because in the brief discourse, he did not correctly interpret the text of the Gospel, and, standing before it, he was overcome by fever and abandoned it, a text to which all refer the power of our Lord Jesus Christ in healing infirmities. John, however, sought to demonstrate that infirmities, not only are useful, but are necessary for Christians. This is contrary to the aforementioned Constitution.

4. Because the vote of the Chapter was not given for John's merits, but for favor and influence. Indeed, before the gathering, some had already declared that it had been decided to whom the honor should be given; during the gathering, meals and meetings were held in which the canons participated, in order to consider how John could certainly be chosen; and there were those who accepted gifts and presents. Thus, it is clear that the members of the Chapter voted not out of conscience, but out of partisan interest. This vote, however, followed the opinion of the Bishop, so that it may be said that the Chapter had a deliberative vote in this case. When asked by the Bishop to express his opinion on the matters presented, and to explain whether John, at the appropriate time, had presented himself for the gathering and had requested to be enrolled; and how he had twice used pins to mark passages in the book, in order to prepare the thesis which he was to develop and treat in his discourse, he replied: "The Chancellor affirms that John appeared before him even during the day and requested to be enrolled; however, the request was not granted immediately, but was recorded in writing after sunset, because the lack of immediate enrollment was not considered a fundamental defect. No irregularity was found in the fact that John twice used pins to mark passages in the book, and twice opened the book; for this was..."

[*Latin ed. p. 85*]

The assembly convened to offer a theological defense was permitted, with the favor of both candidates. The vote of the Chapter followed, both because it was deemed just, and also because it was fitting for the dignity of the Church, and it responded to the desire of all, both ecclesiastical and lay, who were well-disposed. Furthermore, two attestations were sent from the Chancellor of the Episcopal Curia and the Cathedral Chapter, from which it appeared that John had given his name to the assembly at the appropriate time, and that, with both candidates aware and no one objecting, it had been established before the assembly that each could present their arguments repeatedly. With these circumstances, the proposed and debated cause was as follows. A concise account. DEFENSE OF JOHN. Firstly, it was pointed out on John's side that there should be no confusion regard-

Translated by churchlatin.ai, a product of Boyne Archives

ing the date given in the edict by which the assembly was announced, with the day on which it was affixed and published. For, indeed, the date given in the edict was March 5th, but in reality, it was affixed on the 11th. Therefore, if the first date is considered, the sixty-day term would have expired on May 4th; but if the time is calculated from the day of affixation, it would have expired on the 10th of the same month. Hence, since the opponent admitted that John gave his name to the assembly on May 9th, nothing can be objected to his registration. But even if it were the case that the deadline for registration was May 9th, the opposing side would gain nothing, because legal days extend from one to the other midnight; nor do they end at sunset, as is presumed without any reason. Indeed, in this diocese, it is customary to accept registrations even a few moments before the assembly, provided that everything is in order, according to the opinion of many interpreters of the Council of Tridentini. Furthermore, regarding the topic of the defense that John undertook, it was noted that the Bishop had ordered the Chancellor to read aloud the proceedings or report of the previous assembly, observing the proper form; and that he declared this before Michael and John.

[*Latin ed. p. 86*]

Eighty-six candidates presented themselves, wishing to maintain the same form [of the examination]. Indeed, it had been arranged that the candidates would be pricked three times with a needle, so that they might choose one book as the subject for their dissertation. Michael did not object to this arrangement; therefore, it was unjust to complain that John had been pricked with the needle twice. It was also unjustly said that John was accused because, in the text of the Gospel, "And standing over her, he rebuked the fever, and he delivered her, and immediately she was made whole, and the sun rose." He had feigned illness, showing that infirmities, although not always useful, are sometimes necessary for Christians. For the concept and spirit of that passage are especially evident in the healing of the woman, who, after regaining her health, used it especially for the service of God; therefore, the feigned illness was most fitting for the spirit of that passage in the Gospel. Finally, regarding the vote of the Chapter, it was said that Michael accused the Chapter, but not the Bishop. For the Chapter has a consultative vote, while the Bishop has a deliberative vote. Therefore, either the Bishop was so obtuse that he did not understand the arts and deceptions of the Chapter; or he himself was involved in this corruption, which is a terrible thought. And what will sane men say about Michael, who paints that college as so corrupt, and yet exerts himself more than words can express to be elected to it? From all of this, it was concluded that, after the examination, no irregularities or corruption could be noted; therefore, the election that had been made should be fully upheld. For Michael, the elected orator, defended him in the City. He stated, first, that

Translated by churchlatin.ai, a product of Boyne Archives

the examination for the theological degree should be held in the Diocese A, according to the Constitutions of Sixtus IV and Leo X, and according to the Constitution of Clement XIV, dated November 24, 1769, which extended those Constitutions to that Diocese. He argued that, according to those Constitutions, Michael was rightfully elected, and that a new examination should be postponed. First, he argued that many of those Constitutions had been violated in favor of John.

[*Latin ed. p. 87*]

The gathering of candidates to present their theological qualifications does not invalidate the nullity. Furthermore, it was stated that John was admitted to the gathering, but he had already missed the deadline on the morning of May 9th, as the time for registration expired with sunset. For sixty days were to be counted from the date of the edict, which was March 11th. However, this was to be done from the first light of dawn, which marks the beginning of the day; hence, the sixty natural days, consisting of 24 hours each, were to be counted. According to Roman law, as stated in the *ff. de feriis et ditat*, after sunset, the day is considered over; and even more so, since the deadline for submitting the thesis was set for the following day, the 10th of the same month. To prove this, the Advocate presented the chapter from *Consulit - De off. Deleg.*, where it is stated that when someone is summoned to appear on a certain day, they are understood to be obligated to appear on that day and hour – when the right is said to be. Therefore, since the episcopal office, to which the candidates were required to present themselves according to the edict, was closed before sunset, it must be considered that the registration could have taken place until sunset on May 9th. Witnesses continued to testify that it was customary in that Diocese to accept registrations for the gathering until sunset on the last day, as determined by the Bishop. However, it is established from other witnesses that John entered the city in darkness, and therefore, he had already missed the deadline for the gathering. In addition to all of this, it should be noted that John did not present the required documents for registration; and since he did not present them afterwards, up to the time of the election, it must be concluded that this process was null and void for two reasons: first, because John submitted his name after the deadline had expired; and second, because he did not present the required documents during the registration process. The Advocate derived another reason for the nullity from the fact that John had been drawn twice by lot to publicly defend his thesis, since the first time he was drawn to defend the thesis on Question 3, page 3, of the *Summa Theologica* of St. Thomas, he refused, and after the Bishop and the Canons approved, he was drawn again, namely Question 75, cited 3, part 2, of St. Thomas, which he publicly defended and for which he received his doctoral degree. And since the drawing of lots is also considered to be an external element that does not

Translated by churchlatin.ai, a product of Boyne Archives

guarantee victory, it is not...

[*Latin ed. p. 88*]

88. There was a gathering to determine whether a single candidate should be presented for the theological position, while the other could vary and proceed with new candidates. In this, it was futile to oppose, for it was noted that before the drawing of lots, the parties had agreed on fixing the number twice, according to custom; indeed, Michael vehemently opposed this. Certainly, since nothing had been said beforehand, and John, during the actual drawing of lots, seeing the thesis as difficult, claimed to desire a different one, Michael opposed, arguing that, according to the wording of the edict, there must be a concurrence for the procedures established by the Constitutions of Pope Sixtus IV, Pope Leo X, and Pope Clement XIV, which speak of a single drawing of lots, which could not be overturned by a custom, which, moreover, was based on a single example from the year 1850. Finally, the Orator repeated the nullity based on the manner in which the election was held, for the vote of the Chapter is merely advisory, and the Bishop chooses the more worthy of those approved; and the Bishop had also promised to do this in the edict of the gathering. Conversely, from the declaration of a certain canon, it is clear that the Chapter did not approve anyone through a distinct vote, so that an approved candidate could be presented; but, having given only one vote, Michael received two, John received eight, and therefore the canon was named and elected as the theological canon, and the Bishop approved this election. And so, the Bishop considered that the election had been carried out in such a way that, hearing the clamor of the people, he could not doubt that this matter should be attributed solely to the canons, against whom he could not prevail. After these things, the Orator turned to the second part of his speech, arguing that such an election reeked of the greatest injustice. For John was almost brought in by the canons, after the other candidates had been removed, to act as an opponent to Michael; the Vicar General, also a canon, taught John what to do and what to say during the gathering; his election was boasted of beforehand; the deadline was extended in his favor; he was given two draws; several groups of canons, with the agreement of the Vicar General and the Chancellor, were held in John's house; and in the hall, he barely began his dissertation before his Chapter.

[*Latin ed. p. 89*]

Eighty-nine individuals expressed their support for the theological candidate. From this, it was concluded that John had been unjustly elected against the will of the entire clergy, the people, learned men, and the canons; and that, in order not to provoke public indignation, the election had been concealed for some time. Furthermore, injustice was added

Translated by churchlatin.ai, a product of Boyne Archives

to the situation through the consideration of merits, both in terms of knowledge, service to the Church, and conduct. It was stated that Michael was an outstanding preacher of the Word of God; that he had taught for fifteen years in public schools and in the Seminary, Grammar, Rhetoric, Rational Philosophy, and Moral Theology; and that in the year 1874, he had been offered the Chair of Dogmatic Theology, as is evident from several instances in which the Bishop himself invited him to accept more distinguished and important offices. In contrast, it was maintained that John could offer nothing other than the office of parish priest, which he had performed poorly for several years, and therefore, chapter 87, concerning the rules of law, could apply to him: "that six vices shall not open the gates to dignities." This is understood by the Doctors, as the messenger of the divine law and Holy Scripture must be explained, and it is not possible for him to be admitted if he has been convicted of any crime, or even denounced or defamed; otherwise, he must be entirely rejected (Lotter, *De re benef.*, Lib. 2, quaes. 31, n. 145; Ventriglia, *In praxi fori eccles.*, vol. 2, ann. 5, § 2, n. 64 et seq.; S. Rota in Zamoren. seu Salamantina Capellaniae, December 10, 1751, § 7, cor. Caprara; S. Congregation in Capua, November 21, 173c, regarding the second question; and in Juvenacen. Canonicatus Theologalis, August 11, 175c, § cause). With these points established, the advocate maintained, citing several testimonies, that John should be rejected because he had presented several arguments of a publicly disreputable life. Having removed John, either because of the nullity or the injustice of the election, it was concluded that the position should be entirely offered to Michael. For, the disregard of the form had harmed John, as he had been favored by it; whereas Michael had not.

[*Latin ed. p. 90*]

90. The assembly convened to offer the theological chair, which had been duly filled; hence, the nullity pertains more to the injustice of the election than to the repetition of actions. Therefore, since Michael alone was found worthy, the chair should be conferred upon him. The Orator recalled that a place was made available for the Holy See, both because of the disregarded and vitiated assembly in Imola, concerning the *Forma* of the Holy Rota; *Canonicatus Theologalis* 2 April 1753, § 4, before Molino and Monopoli; *Canonicatus seu Praebendae Theologalis* 27 June 1754, § c; as well as because of the injustice of the election, in conferring the chair upon someone unworthy or incapable, according to Reg. 20 Cancellar. Riganti, ibid., n. 1, 13, 16, and 19; in such a case, the Holy See is not obligated to hold another assembly, *Garcia De Benef.*, p. 5, c. 4, n. 224; but it can choose someone who is qualified and suitable; and no one was more suitable than Michael, as evidenced by the votes of the entire clergy and people, who clamored for him to receive the office; therefore, at least out of grace, the benefit should be granted to him. After these matters were debated by both sides, doubts

Translated by churchlatin.ai, a product of Boyne Archives

were proposed. I. Whether the election of the priest John should be upheld in this case? Negative. II. Whether a new assembly should be held, or rather, should the theological chair be granted to the priest Michael in this case?

RESOLUTION. The Sacred Congregation of the Council responded on 27 January 1877: To I. Affirmative; however, the institution should not be given to the elected until it is established before the Sacred Congregation regarding his qualities concerning morals. To II. As provided in the first. After this, since John presented an excellent testimony from his bishop regarding his morals; although he did not move a single stone against the Orator to demonstrate his unworthiness and incapacity, the cause was again proposed under the formula of doubt: Whether to stand by or to recede from the decisions in this case, the Sacred...

[*Latin ed. p. 91*]

On the matter of presenting theological qualifications: On July 28, 1877, the Congregation responded: "Concerning the decisions and the institution to be conferred upon the elected priest, after the third discussion on the matter, with the same doubt in mind, on December 15, 1877, the Sacred Congregation responded: 'Concerning the decisions, and furthermore.'"

FROM THESE, ONE MAY GATHER:

I. Customs or statutes of dioceses, which incidentally modify the form of the presentation of qualifications, but do not affect the substance thereof, can be maintained and do not render it null.

II. The time granted for inscription in the presentation of qualifications expires at midnight on the last day assigned; indeed, it should not be lacking in those who teach, that even a few moments before the presentation begins, for the benefit of the Church, those who wish to present themselves may be admitted, provided that the matter is in order.

III. The Bishop can choose from among the approved candidates the one whom he judges to be more suitable in the Lord, even if the other candidates are more learned and possess better qualifications.

IV. When the election is referred to the Apostolic See, this is not obliged to repeat the presentation of qualifications, but can choose as it sees fit. However, this faculty is rarely used.

DISPENSATION FROM IRREGULARITY. THROUGH BRIEF PRAYERS. On January 26, 1878. Summary of the case. Paschalis R., from the diocese of I., having reached the age of twenty-nine, approached the Most Holy Father with these words: "I have already put on the clerical garments with the intention of serving God, since the number of priests decreases daily due to the malice of civil laws. However, thirteen years ago, at night, while

Translated by churchlatin.ai, a product of Boyne Archives

I was holding a very heavy sleep, I was sometimes afflicted with epilepsy."

[*Latin ed. p. 92*]

92 The Bishop reported that the cleric in Clairac possessed excellent moral qualities and sufficient learning; and that he would be most grateful if another priest could be obtained for his diocese, which is already experiencing a shortage. Again, the Bishop, speaking of the lack of priests, more urgently requests from the Apostolic See a dispensation for the aforementioned cleric, due to his outstanding qualities and his zealous pursuit of the service of God.

A concise discussion.

OBJECTIONS TO PROMOTION. It is objected that, according to Paschalis, Cap. Communiter, 3, dist. 33, those suffering from epileptic or debilitating illnesses should be kept from receiving or exercising sacred orders. Gloss, in dic. cap. v. Communiter, and Ferraris, v. Irregularitas, art. 1, n. 12. For just as the Mosaic law did not permit the sick to touch the sacred things, much less should this be permitted to the demoniac, the infirm, and the mad in the New Testament. Gloss, in cap. v. dict. distinct, v. Usque adeo. Furthermore, in order for the cleric to be safely promoted, it would be necessary that he had not shown any signs of the aforementioned illness for several years, according to the Sacred Congregation of the Council in Todi, July 4, 1704, apud Monacell. tom. 2 tit. 13, formul. 3 n. 36, "there," The cleric... who was once affected by a mild epilepsy, and then did not show any signs of that illness for several years, may be promoted. However, in this case, we have that the cleric has been afflicted by the illness for thirteen years, without any sign of remission; and that we are not speaking of a promotion, but of a promotion. In this case, the rigor of the canons is more closely observed. Furthermore, experience shows that the illness increases with the passage of time; and what now happens at night, in silence, could happen during the day. Therefore, Paschalis would seem to be one who should be rejected from the sacred orders.

ARGUMENTS IN FAVOR OF PROMOTION. However, it is fitting to consider in favor of this cleric that in this case, we are dealing with an illness contracted without fault, from which no absolute irregularity arises; but rather,

[*Latin ed. p. 93*]

The dispensation from irregularity, number 93, provides that someone who is irregular may be considered regular, as long as, according to the judgment of physicians, he could safely be admitted to the altar while suffering from a disease (Schmalzgrueb, *Ius can.*, vol. i, part. j, title 20, number). And if it is considered that the petitioner has been afflicted by a rare and only nocturnal form of epilepsy for thirteen years, and never during the day, it is easily understood that he can safely approach the altar, and

Translated by churchlatin.ai, a product of Boyne Archives

his vows can be fulfilled. This is suggested by the testimonies of physicians; from which it is gathered that this condition is not essentially epileptic, but rather presents only a certain external form of the aforementioned disease. To all of this must be added that, as the Bishop stated, the cleric possesses the best of morals, sufficient knowledge, and a sincere vocation to follow the ecclesiastical life; and that his services are not only useful, but necessary due to the lack of priests. From these considerations, it is easily seen that the petitions of the aforementioned individual should not be rejected. After these observations have been made, it was left to the prudence of the Most Reverend Fathers to decide how the petitions of this cleric should be addressed.

RESOLUTION. The Sacred Congregation, having thoroughly considered the matter, on January 26, 1878, decided as follows: Regarding the granting of a dispensation and habilitation, after having conferred with the Most Holy Father:

FROM WHICH IT IS UNDERSTOOD:

I. It is more difficult to grant a dispensation from irregularity if it concerns advancement to the Sacred Orders, than if it concerns advancement to a lower rank.

II. In this case, the mildness and rarity of the illness, and the fact that the cleric is afflicted by the illness only at night, when there is no danger of disrupting the principal function of the Sacred Order, namely, the celebration of the Mass, seemed to have persuaded the granting of the dispensation.

[*Latin ed. p. 94*]

94. VICARI GENERALES. PER SUMMARIA PRECUM. Die 15 iunii 1878. Compendium facti. Per supplicem oblationem libelli diei 21 februarii praeteriti anni, Reverendissimus Episcopus C. petiit a S. Sede ut sibi facultas indulgeretur retinendi in suum Vicarium Generalem quemdam Nicolaum S., qui et laurea doctorali destitutus manet, simulque Canonicus Parochus Ecclesiae Cathedralis extat. Bina vice ad sex menses tantum Episcopi preces benigno favore exceptae fuerunt, imposito eidem onere ut interim alium idoneum ecclesiasticum virum in Vicarium Generalem eligere curaret. Quo tamen efBuxo tempore, iterum preces renovavit laudatus Antistes ut ad tempus indeterminatum propter nonnulla rationum momenta, inferius enucleanda, haec facultas eidem tribuenda foret. Disceptatio synoptica. Ad hanc denegandam gratiam maxima oriri videtur difficultas tam ex eo quod Nicolaus S. laurea doctorali caret, quam ex eo quia et Dioecesanus est, et Parochi officio fungitur. Neminem enim latet Vicarium Generalem Doctoratus vel saltem licentiatus gradu insignitum esse debere, quemadmodum saepius a S. Congregatione Episcop. et Regul. decisum fuisse refert Nicolius in Flosculis verb. Vicarius Generalis, nec non Monacell. in suo Formul,

Translated by churchlatin.ai, a product of Boyne Archives

leg. pract. part. 2. tit. 16 formul. 5 num. 3 qui insuper docet quod si ad praedictam Congregationem habeatur recursus contra Episcopum non retinentem Vicarium iuris peritum, eadem solet Episcopo demandare ut retineat Vicarium. EA QUAE GRATIAE CONCEDENDAE OPPONUNTUR.

[*Latin ed. p. 95*]

The General Vicar, 95. The General Doctor. And rightly so, for a General Vicar would not be fit to handle ecclesiastical matters unless he were skilled in the law. Indeed, presumption teaches us that legal knowledge is to be found in a Doctor, and not in any other person, as Benedict XIV beautifully demonstrates in his Constitution *Quam ex sublimi*, August 8, 1733, § 4; *Corp. Juris Canonici*, vol. 2, book j, chapter 43; Schmalz, part 4, title 28, no. 7; Ferraris, *Tractatus de Vicariis*, p. 38. Furthermore, as I have indicated, it must be noted that he must also be a diocesan and a parish priest. For it is established in law that a diocesan cannot be chosen as a General Vicar, because, owing to consanguinity, affinity, and other connections, he might deviate from the straight path of justice, or at least render himself suspect to certain parties, as numerous decisions of the Sacred Congregation of Rites and Bishops, especially in Ostia, July 28, 1687; Spalato, March 9, 1693; Sutri, November 16, 1640, demonstrate, as Niccolai states in the cited passage. Above all, it is established that a parish priest should not be appointed to this office: Sacred Congregation of Rites and Bishops, in Senen, March 20, 1576; Oxome, August 4, 1578; Castellana, *Jurisdictiones*, etc., June 22, 1708, to 2 *Dubia*. These are in agreement with the resolutions of the Sacred Congregation of the Council in *Nullius*, May 12, 162c; and in *Arianen*, April 28, 1633, to 3 *Dubia*. However, it must be noted that the aforementioned Congregation of Rites and Bishops has sometimes granted permission to bishops to retain a vicar who is not a doctor, but is otherwise suitable, especially if the bishop is a jurist, as is shown in the resolutions in *Trahu*, June 23, 1594, and in *Oria*, March 29, 1593. But in the present case, this is confirmed by the Bishop, who states: "Many in the entire diocese consider the General Vicar to be learned, amiable, and of sound morals; so that he is the only one among the capitulars who can be chosen for such a task."

THOSE THINGS WHICH FAVOR THE GRANTING OF THIS GRACE.

Despite the fact that he is a diocesan, it is not impossible. For, if there is a reasonable cause, the aforementioned Congregation of Rites and Bishops often grants a dispensation in this regard, provided that there is no opportunity for complaints. Reasonable causes include:

[*Latin ed. p. 96*]

The Vicars General confirm the validity of the resolutions passed by the aforementioned Congregation in Sutri on December 7, 1640, and in Fondi

Translated by churchlatin.ai, a product of Boyne Archives

on September 2, 164$. The Ordinary concurs in this matter, stating that the Episcopal revenues are still withheld by the grasping fiscal authorities, and therefore he is unable to provide for another doctor from outside the Diocese at his own expense. Nor does the quality of the parish seem to be lacking. Indeed, the Ordinary states: "This parish, situated in the city, numbers no more than five hundred inhabitants; nor is it lacking in spiritual service; for the chaplains and various canons willingly administer sacramental confessions and attend to the sacred functions of the Church." Furthermore, according to the resolution of the Sacred Congregation in Astor, on July 1, 1626, we are taught that the Sacred Congregation does not disapprove of the election of a parish priest as a Vicar General when there is a scarcity of inhabitants in the parish, and when the parish church is located near the Episcopal buildings. Considering all of this, and also noting that a similar faculty has been granted by the Holy See, the Reverend Fathers should consider what response should be given to the Bishop's request.

RESOLUTION: The Sacred Congregation of Councils, after due deliberation, gave the following response on June 15, 1878: For the sake of expediency, and until the Bishop can make other provisions, the granted indulgence is extended, provided that he gives his word to the Most Holy Father.

FROM WHICH WE GATHER:

I. That a doctor or licentiate, or otherwise someone suitable, should be chosen from among those who are at least legally qualified, to be appointed as a Vicar General, according to the decree of the Council of Trent, Session 24, chapter 16, concerning reforms.

II. That a parish priest, who holds the care of souls, cannot be chosen as a Vicar General; because the offices of a Vicar General and a parish priest are generally incompatible in the same person.

III. That neither a native of the same city nor of the same Diocese can be appointed as a Vicar General, due to consanguinity.

[*Latin ed. p. 97*]

The general vicars possess 97 affinities and connections, by which they might be led astray from righteous justice, and thus render themselves suspect in certain matters. IV. Therefore, even though many additions and qualities of persons might be present in the matter, and the persons elected to the vicariate, the grace of dispensation was nonetheless required; which, it is true, was not granted perpetually, but for a time; until, indeed, the Bishop can otherwise provide. FROM THE DECREE OF THE HOLY CONGREGATION FOR THE SACRED RITES. LINGONEN, or PARISIAN. Concerning the Beatification and Canonization of the Venerable Servant of God, Father Honoratus of Paris, a priest of the Order of Friars Minor of Saint

Translated by churchlatin.ai, a product of Boyne Archives

Francis, Capuchin. Whereas, on the 17th of April of the preceding year, the Most Holy Pope Pius IX, with paternal benevolence, ordered that an investigation be conducted in the Ordinary Congregation of Sacred Rites, without the intervention or vote of the Consultors, regarding the fame of the sanctity of life, virtues, and miracles of the aforementioned Venerable Servant of God, Father Honoratus of Paris, at the request of the Reverend Father Amadeus of Orvieto, a priest of the Order of Friars Minor of Saint Francis, Capuchin, and General Postulator of the Causes of Beatification and Canonization of the Servants of God of the aforementioned Order; and whereas, Our Most Eminent and Reverend Lord Cardinal John Baptist Pitra, in place of and in the stead of the Most Eminent and Reverend Lord Cardinal Charles Sacconi, the Promoter of the Cause, proposed the following question for discussion in the Ordinary Congregations of Sacred Rites held today, according to Ada, vol. XI, page 122, number 7.

[*Latin ed. p. 98*]

98 The Vatican Congregation having deliberated; namely: Whether it can be established, concerning the validity and relevance of a process constructed by Apostolic authority based on the reputation of a holy life, virtues, and miracles, in the aforementioned case of the Venerable Servant of God, in the matter and to the effect of which we are speaking, that the Eminent and Reverend Fathers entrusted with safeguarding the sacred rites, having carefully considered all matters, and having heard the voice and writings of the Reverend Father Doctor Lawrence Salvati, Promoter of the Faith, have decided: Affirmative. On April 13, 1878. These matters, faithfully related in writing, were presented to His Holiness, our Lord Pope Leo XIII, and His Holiness approved and confirmed the decree of the Sacred Congregation. On May 2 of the same year. F. R. T. H. M. Cardinal MARTINELLI, Prefect of the Sacred Congregation. L. © S. Placidus Ralli, Secretary.

[*Latin ed. p. 99*]

LETTER FROM HIS HOLINESS, POPE LEO XIII, TO THE MOST REVEREND CARDINAL MONACO LA VALLETTA, GENERAL VICAR OF ROME.

Most Reverend Cardinal,

Amidst the reasons for joy and consolation that, from the very beginning of our Pontificate, we have had in abundance, due to the undeniable expressions of reverence and affection that have reached Us from every part of the world, we have not lacked grave sorrows, due to the general condition of the Church, which almost everywhere suffers from fierce persecution, and for what we see happening in the very City of Rome, the center of Catholicism and the august seat of the Vicar of Christ. Here, a press without restraint and newspapers intent on constantly combating the faith with sophistry

Translated by churchlatin.ai, a product of Boyne Archives

and ridicule, attack the sacred laws of the Church, and undermine its authority.

[*Latin ed. p. 100*]

Apostolic Letters, detrimental to the interests of the Church and undermining its authority; in these times, Protestant temples have arisen, built with the funds of biblical societies, even in the most populous areas, almost as an insult; here are schools, orphanages, and charitable institutions opened to the imprudent youth, with the apparent philanthropic intention of benefiting them in the cultivation of the mind and in their material needs, but with the true purpose of forming a generation hostile to the Religion and the Church of Christ. And as if all this were not enough, through the efforts of those who, by duty, are obligated to promote the true interests of the Roman citizenry, the Catholic Catechism has recently been banned from the Municipal Schools. A deplorable measure, which removes even this bulwark against the surging heresy and incredulity, and opens the way to a new kind of foreign invasion, far more harmful and dangerous than the former, inasmuch as it aims more directly to steal from the hearts of the Romans the precious treasure of faith and the fruits that flow from it. This new assault on the Religion and piety of Our people fills Our soul with a lively and poignant sorrow, and compels Us to write to you, Your Eminence, who acts as Our representative in the spiritual government of Rome, this letter on this painful subject, in order to bring it to your attention before God and men. And from the beginning, in virtue of Our pastoral ministry, it is necessary to remind every Catholic of the grave duty that, by both natural and divine law, is incumbent upon him to instruct his children.

[*Latin ed. p. 101*]

Apostolic Letters 101 concerning the supernatural truths of the faith, and the obligation that binds those who govern a Catholic city to facilitate and promote its fulfillment. And while, in the name of Religion, we raise our voices to defend its most sacred rights, we also wish it to be known how much this imprudent decision is contrary to the true good of that very society. Certainly, one cannot imagine what pretext could have suggested such a measure, unless it be that unreasonable and pernicious indifference towards religion, in which it is now desired that the people should grow. Until now, reason and common sense have taught men to set aside and discard that which has not proven beneficial in practice, or which, due to changed circumstances, has become useless. But who can affirm that the instruction of the Catechism has not, until now, proven beneficial? Is it not the religious instruction that has renewed the world, that has sanctified and improved human relationships among men, that has made moral sensitivity more refined, and that has educated that Christian conscience, which

Translated by churchlatin.ai, a product of Boyne Archives

morally restrains excesses, rebukes injustices, and elevates faithful peoples above all others? Perhaps someone will say that the social conditions of our age have made it useless and harmful? But the health and prosperity of peoples have no secure safeguard outside of truth and justice, of which the present society so keenly feels the need, and to which the Catholic Catechism contributes by instilling supernatural truths of the faith; and the obligation that presses upon those who hold the reins of power in a Catholic city, to make the fulfillment of this task easier and more expedient. While, in the name of Religion, we raise our voices to defend its sacred rights, we also wish it to be known how much such a misguided plan is detrimental to the good of society. Indeed, reason escapes us as to what prompted this decree, unless it be that irrational and dangerous indifference towards religion, in which it is presumed that the people of this time are to be nurtured. Reason and natural sense have always taught men to set aside whatever has not proven beneficial in practice, or which, due to changed circumstances, has become useless. Who, then, can deny that the Catechism has not proven to be of great benefit? Is it not to be attributed to religious instruction that the world has been renewed, that human customs among men have become more humane, that moral sensitivity has become more refined, that a religious conscience has been cultivated, which restrains excesses, rebukes injustice, and elevates faithful peoples above others? Perhaps someone will dare to say that the social conditions of our age have made the Catechism useless or harmful? But the health and prosperity of peoples have no secure safeguard outside of truth and justice, of which the present society so keenly feels the need.

[*Latin ed. p. 102*]

102. Apostolic Letters, fully preserving their sacred rights. Therefore, for the sake of the precious fruits that have already been gathered and that are rightly hoped for from that instruction, it should not be banished from public schools, but rather promoted with all possible means. And this is also demanded by the nature of the child and the very special condition in which we live. It is not permissible, under any circumstances, to renew the judgment of Solomon upon the child, and to divide him irrationally and cruelly between his intelligence and his will; while the former is cultivated, the latter must be directed to the attainment of virtuous habits and the ultimate end. He who cultivates the mind with all his strength, neglecting the will, brings it about that instruction becomes a dangerous weapon in the hands of the wicked. It is the argument of the mind that is added to malice and often to power, against which no defense can be made. And this matter shines so clearly that it was recognized, albeit at the price of contradiction, by those very ones who wish to exclude religious instruction from schools; who do not limit their efforts to the intellect alone, but extend them also to the will, teaching in schools a morality that they call civil and

Translated by churchlatin.ai, a product of Boyne Archives

natural, and guiding youth to the acquisition of social and civic virtues. But such a morality cannot lead man to the highest end destined for him by divine goodness in the beatific vision of God, nor does it have sufficient force upon the soul of the child to educate him in virtues.

Tutela numquam datum fuit extra veritatem et iustitiam; quarum maxime praesens indiget societas, quibusque sarta tectaque iura sua Catechismus profitetur. Protection has never been found outside of truth and justice; of which society is in greatest need, and by which the hidden and veiled rights of all are defended by the Catechism. Therefore, for the sake of the fruits already perceived, and those that we hope to obtain from this religious institution, it would be necessary not to reject it, but to promote it with all our strength. This is also confirmed by the nature of the young and the circumstances in which we live. For it is not permissible to renew the judgment of Solomon upon the child, but to divide him irrationally and inhumanly with regard to his intelligence and will; and while the former is cultivated, the latter must be directed to the attainment of virtuous habits and the pursuit of the ultimate end. He who cultivates the mind with all his strength, neglecting the will, brings it about that instruction becomes a pernicious sword among the wicked. It is the argument of the mind that is often added to malice and power, against which no defense is given. And this matter shines so clearly that it is held by those very ones who desire to exclude religious instruction from schools; while they do not direct their efforts only to the intellect, but also to the will, striving to teach a morality, which they call civil.

[*Latin ed. p. 103*]

Apostolic Letters 103: Virtue, and maintaining it, is not only essential for the well-being of the soul, but also responds to the true and felt needs of man, who is, in his nature, both a religious and a social being, and no advancement of science can ever uproot from his soul the deepest roots of religion and faith. Therefore, why not make use of the Catholic Catechism to educate the hearts of young people in virtue, in which are found the most perfect method and the most fertile seeds of a sound education? The teaching of the Catechism ennobles and elevates man in his own conception, leading him to respect himself and others at all times. It is a great misfortune that many of those who advocate for the Catechism to be removed from schools have forgotten, or do not consider, what they learned from the Catechism in their childhood. Otherwise, it would be very easy for them to understand how, when teaching a child, one should explain that he came forth from the hands of God, as a fruit of the love with which He freely bestowed him; that all that is seen is ordered for Him, who is King and Lord of creation; that he is so great and so valuable that the Eternal Son of God did not disdain to take on His flesh in order to redeem him; that his forehead is washed with the blood of the God-Man in baptism; that his spir-

Translated by churchlatin.ai, a product of Boyne Archives

itual life is nourished by the flesh of the divine Lamb; that the Holy Spirit, dwelling in him as in a living temple, infuses into him a life and virtue that are entirely divine; and that this is the same as giving him the most effective impulses to preserve the glorious quality of being a son of God and to honor it with virtuous conduct. They call and consider it natural that it be taught in schools, and they take care that youth be directed towards the acquisition of civic and social virtues. But such a philosophy, while moral, does not lead to the higher end, the Divine Goodness established in the blessed vision of God, and it is also inadequate to instill true virtue in the soul of a child, and to enable him to remain steadfast in the right path; nor does it satisfy the just desires and aspirations of man, since he is at the same time a religious and a social being, and no progress of science can ever uproot from his deepest soul the roots of faith and religion. Therefore, why are the hearts of young people not drawn to virtue through the Catholic Catechism, in which the most perfect method and the hidden seeds of a sound education are found? Man recognizes his own dignity through the instruction of the faith; which causes him to respect himself and others at all times. It is truly a great loss that those who advocate for the exile of the Catechism have forgotten, or are reluctant to consider, what they learned through the Catechism in their childhood. Otherwise, they would easily understand that when teaching a child: he came forth from the hands of God, as a fruit of the love with which he was freely increased by God; that all that is seen was ordered for Him who is called King and Lord of creation; and that he is so great and so valuable that the Eternal Son of God did not disdain to take on His flesh in order to redeem him.

[*Latin ed. p. 104*]

Apostolic Letters would also include the understanding that one may rightfully expect great things from a child, who, in the school of the Catechism, learns that he is destined for a most exalted purpose in the contemplation and love of God; that he is made attentive to constantly watching over himself and is comforted with every kind of help to sustain the war waged against him by implacable enemies; that he is trained to be docile and obedient, learning to venerate in his parents the image of the Father who is in heaven, and in the Prince the authority that comes from God and derives its reason for being and its majesty from God; that he is led to respect in his brothers the divine likeness that shines upon his own face, and to recognize, beneath the miserable appearances of the poor, the very Redeemer; that he is protected from doubts and uncertainties by the benefit of the Catholic Magisterium, which bears inscribed upon it the titles of its infallibility and authenticity, in its divine origin, in the wondrous fact of its establishment on earth, and in the abundance of the sweetest and most salutary fruits that it produces. Finally, they would understand that Catholic morality, armed with the fear of punishment and the certain

Translated by churchlatin.ai, a product of Boyne Archives

hope of the highest rewards, does not share the fate of that civil ethics that is sought to be substituted for the religious; nor would they ever adopt the disastrous resolution of depriving the present generation of so many and such precious benefits by banning the teaching of the Catechism from the schools. For it is noble and precious, so that the Eternal Son of God would not disdain to take on flesh in order to redeem him; to have his face made holy in the baptism of the God-Man with the blood; to nourish his spiritual life with the flesh of the Divine Lamb; to infuse into him the Holy Spirit, dwelling in him as in His own Temple, bestowing upon him life and virtue altogether divine; it is as if one were to offer him the most efficacious aids so that he may more easily defend himself, and through a virtuous way of life, manifest the glorious quality of a son of God. They would also understand that all things excellent can be expected from a child who has learned in the school of the Catechism that he is constituted for the highest purpose in the contemplation and love of God; that he is warned to constantly watch over himself; that he is comforted with every kind of help to sustain the war prepared for him by the most fierce enemies; and that he is taught obedience and submission, already learning to venerate in his parents the image of the Father in heaven, and in the Prince the authority that derives its origin, its essence, and its majesty from God; that he is led to respect in his brothers the divine image that shines upon his own face, and to recognize, beneath the appearance of the poor, the very Redeemer; that he is protected from doubts by the help of the Catholic Magisterium, which bears the protection of its infallibility and authenticity in its divine origin, in the wondrous fact by which it was established on earth, and in the abundance of salutary fruits that it produces.

[*Latin ed. p. 105*]

Apostolic Letters 105. Let us say that the proposal to provide religious instruction only to those children for whom the parents explicitly request it is entirely illusory. Indeed, it is difficult to understand how the authors of this unfortunate decree did not realize the negative impression that such a situation would create in the mind of the child, seeing religious instruction placed in such different circumstances from the other subjects. The child, who needs to understand the importance and necessity of what is being taught in order to be motivated to study diligently, how can he be expected to engage with an instruction for which the school authorities appear either indifferent or hostile, tolerating it only with reluctance? And furthermore, if there are (as it is not difficult to find) parents who, either out of malice, or much more often out of ignorance and negligence, do not think to request religious instruction for their children, then a large part of the youth would be deprived of the most salutary teachings, to the extreme detriment not only of those innocent souls, but of civil society itself. And given that things stand in such a state, would it not be the duty of those who are in charge

Translated by churchlatin.ai, a product of Boyne Archives

of the school to remedy the malice or negligence of others? It was recently thought that, in order to achieve undoubtedly less significant advantages, it would be necessary to make elementary education compulsory by law, even forcing parents to send their children to school with fines. And now, how can one bear to deprive young people of this? Finally, they will understand that Catholic morality, which is based on the fear of punishment, and also on the certain hope of the elect's reward, does not follow the path of civil ethics, which seeks to suffice with religious instruction, and has never followed a misguided course by which the present generation is deprived of the greatest benefits, since the Catholic Catechism has been expelled from the schools. And we have used harsh words: for the reason given for providing religious instruction only to those children whose parents explicitly request it is utterly absurd. For it is not easy to understand how the authors of this wicked plan did not consider how much harm would be done to the child's mind, who would see religious instruction treated in a way so completely different from all other subjects. The child, to whom the necessity and usefulness of any particular study must be made clear, so that he may be properly motivated to study it, how can he be expected to engage with an instruction for which the authorities themselves show themselves to be either cold or hostile, and which they tolerate only with reluctance? And if, moreover, there are parents who, either out of wickedness, or out of ignorance, or out of negligence, have failed to request the benefit of religious instruction for their children (which is not difficult to find), then a large part of the youth would be deprived of the most salutary teachings, to the extreme detriment not only of those innocent souls, but of civil society itself.

[*Latin ed. p. 106*]

106 Apostolic Letters: Is religious instruction, which undoubtedly is the most solid guarantee of wise and virtuous guidance in life? Is it cruelty to demand that these children grow up without any ideas or sentiments of religion, only to find themselves, when fervent adolescence arrives, facing alluring and violent passions, disarmed, devoid of any restraint, with the certainty of being swept away into the slippery paths of vice? It is a torment to Our paternal heart to see the lamentable consequences of this ill-advised decision, and Our sorrow is increased when we consider that today, more than ever, there are strong and numerous temptations to every kind of vice. You, Most Reverend Cardinal, who, by virtue of your high office as Our Vicar, closely follows the course of the war that is being waged in our Rome against God and the Church, know well, without Our needing to speak at length about it, what and how many are the dangers of corruption that beset youth: pernicious and subversive doctrines of every order, bold and violent intentions to the detriment and discredit of every legitimate authority, and finally, immorality that proceeds without restraint through a thou-

Translated by churchlatin.ai, a product of Boyne Archives

sand paths to contaminate the eyes and corrupt the hearts. This concerns not only them, but also the civil society itself. And given that such extreme measures have been taken, does it not fall upon the heads of schools to bear the blame for either impropriety or negligence? When even of lesser importance, elementary instruction was made compulsory, parents were fined to compel their children to attend school; who would now dare to deprive Catholic youth of religious instruction, which offers itself as a more prudent safeguard for living a virtuous life? Is it not cruel to demand that such children grow up without any knowledge of religion, until fervent adolescence arrives, when they are compelled to struggle against violent temptations, disarmed, devoid of every restraint, so that they may easily be led astray into the slippery paths of vice? Our paternal heart is tormented with sorrow when it considers the lamentable consequences of this decision; and Our pain is increased when we consider that today, more than ever, there are stronger and more numerous temptations to every kind of vice. Indeed, Most Reverend Lord, who, by virtue of your excellent office as Our Vicar, are able to observe more closely the war being waged in Rome against God and the Church, you are not unaware that we will not linger; how many and what kinds of dangers of corruption beset youth. There are pernicious doctrines against the established order, violent efforts to the detriment of any legitimate authority, and finally, shameless immorality that, without any veil, proceeds through a thousand paths, infecting hearts and eyes.

[*Latin ed. p. 107*]

Apostolic Letters 107. When such attacks are made against the faith and morals, everyone can readily see how opportune a moment has been chosen to banish religious instruction from public schools. It is intended, perhaps, by these measures, instead of that Roman people, which, from the time of the Apostles, was celebrated throughout the world for its faith, and which, even to our own times, was admired for the integrity and religious cultivation of its customs, to form a people without religion, dissolute, and to lead it to a state of barbarism and savagery? And in the midst of this people, perverted by such deceit, how could the Vicar of Christ, the Teacher of all the faithful, see his supreme authority revered, maintain his august See with honor, and attend to the duties of his pontifical ministry with respect and tranquility? Thus, My Lord Cardinal, are the conditions, which are already partially present, and which we foresee for the future, unless God, in His mercy, shall put a limit to this onslaught of attacks, each one more reprehensible than the other. But while the Providence of God, for reasons inscrutable to us, allows us to be tested in this way; if it is not within our power to change the state of affairs, it is nevertheless our duty to make every effort to mitigate it, so that these burdens may be lessened and the damages made lighter. Therefore, it is necessary to redouble care and

Translated by churchlatin.ai, a product of Boyne Archives

diligence in the instruction of the Catechism, but the void that is created by the cunning of others must now be filled with new and effective means. We are certain that, even in this circumstance, the Roman clergy will not fail in the duties of the sacred ministry; rather,

[*Latin ed. p. 108*]

108 Apostolic Letters, and so that the damage may return less forcefully. Therefore, it is necessary that not only the Parish Priests double their diligence and zeal in the teaching of the Catechism, but that new and effective means be employed to fill the void created by the fault of others. We do not doubt that the Clergy of Rome will not fail, even this time, in the sacred duties of their priestly ministry, and will exert themselves with the most affectionate care to protect the Roman youth from the dangers that threaten their faith and their morality. We are also certain that the Catholic associations, flourishing in this City with such benefit to the Religion, will contribute with all the means at their disposal to the holy endeavor of preventing this blessed City, losing its sacred and august character of religion and the envied boast of being the Holy City, from becoming a victim of error and a theater of incredulity. And you, Lord Cardinal, with the wisdom and firmness with which you are adorned, strive that the oratories and schools may increase, where young people are gathered together to be instructed in the most holy Catholic Religion, in which they were born through a singular grace of God. Seek, as is already being done with good results in some churches, that virtuous and charitable lay people, under the guidance of one or more priests, offer their services to teach the Catechism to the children, and that the parents be encouraged by their respective parish priests to send their children there, and that they be reminded of the duty that rests upon all to demand that religious instruction be present in the schools of their children. Such religious instruction will also be of great benefit to adults, so that in those places, those who have been more suited to it may retain the salutary knowledge that they received from childhood. And never cease to stir up the piety of priests and lay people, ensuring that...

[*Latin ed. p. 109*]

Apostolic Letters: 109 schools for the education of their own children in religious instruction. Catechisms for adults will also be established in places deemed most suitable, in order to keep alive in the minds of all the salutary teachings learned from childhood. Never cease to rekindle piety and to better invigorate the commitment of priests and laypeople, by bringing to their attention the importance of this work, the merits that will be acquired before God, before Us, and before the entire society, and We will strive to give due consideration to those who are most diligent. Finally, it does not escape Us that, in order to succeed better in Our intentions, the

Translated by churchlatin.ai, a product of Boyne Archives

support of material means is also necessary, which do not correspond in proportion to the needs. But if We are compelled to live off the alms of the faithful, who themselves are in great distress in these troubled and mournful times, We cannot be as generous as Our heart would like; nevertheless, We will not fail to do everything that is permitted to Us, to avert the harm that comes first to the child and then to civil society from neglected religious education. Moreover, for all Our needs and concerns, the invocation of divine help must precede, without which all hope of a happy outcome is in vain. Therefore, We turn to you, Lord Cardinal, earnestly urging you to exhort the Roman people to offer fervent prayers to God, so that He may deign to preserve the light of the Catholic faith intact in this holy city, so that those who are most diligent may have before their eyes the magnitude of this work, the merits that they can acquire before God, before Us, and before the entire society; and let it be known to them that We will regard the most diligent with singular esteem. Finally, it is not hidden from Us that material resources are necessary, which are not in proportion to the needs, so that the undertaking may be more successfully accomplished. And if We, while living off the alms of the faithful, who are also impoverished by these mournful times, cannot be as generous as Our heart dictates, nevertheless, We will not fail to do everything that is permitted to Us to prevent the evils that come from neglected religious instruction, both to the child and to civil society. Moreover, the invocation of divine help must precede all Our plans and endeavors: without it, all hope of a happy outcome is in vain. Therefore, We address you, Most Reverend Lord, urging you to stir up the Roman people to offer fervent prayers to God, for this purpose, so that He may deign to preserve the light of the Catholic faith intact; which the heretical sects, which are now in favor, presume to obscure or completely extinguish, and all impieties conspiring together to undermine this most firm foundation, against which, as Scripture says, the gates of hell shall not prevail. The piety of the Romans towards the Blessed Virgin...

[*Latin ed. p. 110*]

The Apostolic Letters would seem to intend to obscure or completely extinguish the seven heretical sects received with honor, and the impieties conspiring together to overthrow this most steadfast Rock, against which, as it is written, the gates of hell shall not prevail.

In the hearts of the Romans, there is an ancient devotion to the Immaculate Mother of the Savior; but now, as the danger increases ever more, let them turn to her more often and with more fervent prayers, she who crushed the serpent's head and overcame all heresies. On the days that commemorate the glorious Apostles Peter and Paul, let them reverently prostrate themselves in their Basilicas, and implore them to intercede with God for the city they sanctified with their blood, and which they left as a repository of their remains, as a pledge of their unceasing protection. Let

Translated by churchlatin.ai, a product of Boyne Archives

us earnestly beseech the heavenly Patrons of Rome, who, either with their blood, or with the works of the apostolic ministry, or with noble examples, made the faith firmer in the hearts of their forefathers, which is now sought to be torn from the breasts of their children; and may God, in His mercy towards us, not allow His religion to become a mockery to wicked men.

Meanwhile, receive, Most Eminent Cardinal, the Apostolic Benediction, which we impart from the depths of our heart to you, to the Clergy, and to our entire most beloved people.

From the Vatican, on the 26th of June, 1878.

LEO XIII.

[*Latin ed. p. 111*]

FROM THE HOLY CONGREGATION FOR THE COUNCIL OF TRENT, CONCERNING DISPENSATIONS IN MARRIAGE. On July 28th, December 15th, 1877, and March 23rd, 1878. Summary of the case. Michael, aged 30, had been living in a familiar relationship with Emilia for nearly four years. Emilia was to receive a considerable dowry from her father's inheritance, which would have suitably adorned her wedding; accordingly, Michael desired to obtain her hand in marriage, as was customary. However, although Emilia was abundantly provided for by her dowry, she was not equally endowed with health; and a certain nervous condition, from which she had suffered for a long time, suggested that she might be less suited for the marital state. The fear subsided after the expert opinion, which judged that such a nervous disorder would likely diminish or disappear after the use of marriage. Six months elapsed between the betrothal and the celebration of the marriage. While preparations were being made for establishing the new family, it was arranged that Emilia would be placed under the care of a governess. This woman was French, named Sydonia, to whom Emilia's mother had entrusted the task of educating her. The governess, taking advantage not only of her religious office but also of the infirmity and weakness of the young woman's physical constitution, had exerted such a strong influence on her mind that she had almost caused the natural and innate affection for her own mother to be forgotten in the heart of the pupil. This was accomplished, although Emilia showed that she bore it with great distress. Afterwards, the marriage was celebrated with solemn rites on July 2nd, 1874. After the meal, Michael and Emilia boarded a carriage, intending to begin the customary journey of the newlyweds. However, the timid young woman, as soon as she...

[*Latin ed. p. 112*]

112 The man observed that the dispensation for marriage had been

Translated by churchlatin.ai, a product of Boyne Archives

granted, and that a new and unexpected disturbance had arisen, and without delay, he was compelled to return to his wife's summer residence. They remained at the mother's house for approximately eight days, as the spouses claim, or until the end of the aforementioned month, as the bride's mother stated; and then they went to their marital home. On September 15th, Emilia secretly left her husband's home and went to Vienna with the governess, Sydonia. Both spouses confess that during this brief period of married life, the marriage could not be consummated due to Emilia's most stubborn resistance. Indeed, the husband himself reported that Emilia constantly wept at night; and she preferred to lie on the floor rather than in the bed, in order to avoid her husband. Emilia's mother, having become aware of this situation, began to urge her daughter to fulfill her marital duties; which they attempted, albeit in vain, both a priest and Emilia's tutor. A few days after Emilia's departure, the man went to Vienna, hoping to reconcile with his wife; but his efforts were completely futile. Therefore, utterly despairing, he presented a supplication to the Bishop, requesting that all the facts be examined, and that, after ascertaining the truth of the matter, he might obtain a dispensation from the Apostolic See. After the Ordinary had completed the canonical process, according to the instructions given, he reported that Emilia had refused to submit herself to a physical examination. A concise summary of the arguments. He argued that the marriage had not been consummated; that the lack of a physical examination did not prevent the granting of a dispensation; and that there were grounds for a dispensation. The inconsummation of marriage must be proven by three means, namely, by the oath of the spouses, by the testimony of seven witnesses, and by a physical examination. MICHAELIS, the defender, presented this threefold argument.

[*Latin ed. p. 113*]

The reason for granting a dispensation from marriage is not to be applied rigidly, but rather demonstratively; that is, if any element is lacking, the dispensation should be granted, provided there is moral certainty of the lack of consummation. He confirmed this theory from Chapter "Laudabilem," § "If, however," and from the chapters on frigidity and malice, at the end. In this case, the testimony of both spouses is present; for the husband, under oath, declared: "that he had never consummated the marriage," although he had repeatedly incited his wife to carnal intercourse. The same Aemilia, under oath, asserted that the consummation had indeed never taken place, because of her persistent resistance. It is to be considered that the testimony of these spouses is credible, given their probity and honesty. Furthermore, there is present the testimony of a third party. For all those witnesses who, although they cannot testify to a fact directly, swear, as the Glossa says in Chapter "Laudabilem," that they believe the spouses to have sworn truthfully. Also, Aemilia's mother, who was privy to the

Translated by churchlatin.ai, a product of Boyne Archives

family's secrets, testified, as if from personal knowledge, denying the consummation. The lack of consummation is also inferred from a series of facts: Aemilia dreamed of an ideal love; during the marriage ceremony, she wept continuously; she refused to be left alone with her husband; she spent sleepless nights, watching over him, lest he violate her. However, the lack of a physical examination is not a decisive factor, because it is only supplementary evidence; and when other evidence is present, it can be disregarded as misleading. Furthermore, it is usually only employed when the spouses contradict each other, one denying and the other affirming the consummation; but when the spouses, under oath, deny the consummation, as in this case, an examination is not necessary, according to Coscius, *De separ. Tor.*, book 5, chapter 2, number 136. Therefore, an examination of virginity is not to be employed in this case, because both spouses testify to the lack of consummation. Furthermore, the Defender of the Faith presented examples in which the Sacred Congregation granted the dispensation, despite the absence of an examination.

1. Among other examples, see Volume X, pages 376 and following, of this journal.

2. *Acta*, Volume XI, page 123.

[*Latin ed. p. 114*]

Dispensation from Marriage 114. Sometimes it is fitting to relax the bonds of the law, as the Council of Trent states in Session 23, chapter 18, concerning reforms; and this doctrine can be applied to a valid but unconsummated marriage, from which the Most Holy Father often grants a dispensation, even for reasons of private utility. In this case, there are clear reasons for obtaining a dispensation: the first is that this marriage, being deprived of its principal purpose, namely the procreation of offspring and the accustomed intimacy of life, is rendered unreasonable by Aemilia's obstinacy. Both spouses have the right to pursue this end; but Michael refuses to send a messenger, and Aemilia obstinately refuses the accustomed intimacy of life; therefore, recourse must be had to a papal dispensation. The second reason is seen by the defender in the aversion of the parties; the third is finally found in the salvation of souls. In this matter, such a reason is urgent both because of Michael's incontinence, and because of the danger of apostasy, in which it is to be feared that the unfortunate young man will seek a remedy for his misfortune, while living in regions where heresies abound.

DEFENDER OF THE MARRIAGE: He argues that this controversy cannot be defined, because the woman, by refusing the physical examination, introduces a serious suspicion of her own evil; Pope Gelasius states in canon christianis caus. u, quaest. i: "He who refuses judgment appears to be estranged from justice." However, in law, it is easily presumed that spouses conspire against the marriage; chapter 3, concerning him who

Translated by churchlatin.ai, a product of Boyne Archives

has knowledge: "We respond to your fraternity that they should not be separated based solely on their confessions, or on the rumor of neighbors, because sometimes some people intend to conspire against marriage with each other; and they easily fall into the confession of incest, if it were believed that they should be judged by the judgment of the Church. However, the rumor of neighbors is not so to be judged valid, that unless reasonable and trustworthy proofs are added, it may well be..."

Aemilia herself, perhaps due to her levity of mind, or due to the wicked counsel of the governess, persuaded Michael to abandon the faith, so that she might be freed from him. It was very important to the governess that the marriage be dissolved, at least by the civil authority, so that she could more easily use Aemilia's wealth.

[*Latin ed. p. 115*]

"Concerning the dispensation of marriage, 115, it is stated that marriage may be declared invalid." In this matter, in place of legitimate proofs, the presumption of the law arises that the marriage has been consummated; since the spouses have lived together for nine weeks in the same room, indeed even in the same bed. Hence, with the presumption of the consummation of the marriage confirmed, it would be useless to discuss other causes. But even if the hypothesis of non-consummation were given, the condition of our spouses would not be improved; because just and reasonable causes would always be lacking to request a dispensation. Indeed, all these causes presented by the defender Michael depend on a single refutation of the marital debt. Regarding this cause, although Emilia had recounted many things about the ideal love that she had previously intended to cultivate in marriage, and also about the antipathy and contempt she subsequently conceived for her husband, nevertheless, having been compelled to swear, she retracted everything, and revealed this single cause of refutation of the marital debt, namely, "I am afraid." But this fantastic and empty fear, the defender of the marriage argued, is nothing other than the effect of the insinuations of a cunning instructress, who, for her own benefit, turned the mind and soul of the weak girl away from the love of her mother and husband, as Emilia herself testified. Therefore, the defender of the marriage observed that the girl was being oppressed by a certain fascination and moral wrongdoing; but perhaps a very easy remedy could be found, so that the Bishop or Parish Priest would have heard the girl's venerable voice. For, freed from the fascination of the perverse instructress, she would return to the love of her mother and husband, and peace and harmony would be restored in their family, and finally, the religion and dignity of the sacrament of marriage would be preserved unharmed. These and other things were

Translated by churchlatin.ai, a product of Boyne Archives

noted.

[*Latin ed. p. 116*]

116. Doubt concerning a dispensation for marriage. Whether it is necessary to consult with the Most Holy See regarding a marriage that has been consummated but is not producing offspring in the case of f.

RESOLUTION. The Sacred Congregation of the Council, after deliberation, gave its response on July 28, 1877: "It is deferred, and with the following understanding." This understanding of the Sacred Congregation was made known to the Archbishop and the Bishop, so that together they might strive to reconcile the spouses' minds, and to remove the instructress from Emilia, using legitimate and appropriate means. Afterwards, the Bishop reported that, besides what has been mentioned previously, nothing further remains to be referred to me, except that the husband is increasingly alienated from his wife each day, frustrated in his hope of posterity. The Archbishop, however, stated: "Both of the aforementioned women (Emilia and the instructress) appear to live in close proximity in Vienna, and there is no means by which they can be separated from each other, since they publicly avoid anything that might give the appearance of impropriety, and therefore, secular intervention in this matter would be of no avail." With these reports in mind, the case was again, as is customary, presented with the following formula of doubt: Whether it is necessary to consult with the Most Holy See regarding a dispensation for a marriage that has been consummated but is not producing offspring in the case of f. To this doubt, the Sacred Congregation of the Council responded on December 15, 1877: "Affirmatively." Permission was granted to present a new argument regarding the marriage. Therefore, a new issue has arisen, demonstrating that the mandates given by the Sacred Congregation in the meetings of July 28, 1877, have not been carried out; and therefore, the controversy remains in the same state as it was before the aforementioned meetings. And since, from that time, it had been discovered that legitimate means of...

[*Latin ed. p. 117*]

Regarding the dispensation of marriage, 117. From this, he concluded that no dispensation should be granted, unless the prescriptions relating to due execution are observed. He noted that, above all, the minds of the spouses had not been estranged by hatred or perversity of mind. Nor had the woman been of bad character, so that her husband should abhor her; on the contrary, all witnesses testified to her honesty. And there is nothing in her except a weakness of mind; which the instructress abused in order to entice her, and to deceive her with wicked arts. Therefore, something must be seriously undertaken to effect the reconciliation of the minds. However, since the Prelate had used words and efforts in vain to reconcile the minds, Michael should have exerted himself all the more. According to civil laws, a

Translated by churchlatin.ai, a product of Boyne Archives

remedy exists either to return the wife to her own home, or to place her in a safe place, far from the instructress. This is prescribed by the Austrian civil code; and indeed, that law is so steadfast in preserving the bond of marriage, that it does not allow the spouses to separate, even with their mutual consent, without the permission of the tribunal. Therefore, Michael could have obtained that Emilia be placed in a safe place for the protection of conjugal honor. This safe placement is urged by the Sacred Canons, chapter 5, canon 32, question 1: "If, indeed, the husband, without any deceit, should unwillingly receive (an adulteress) into another place, in which it is not lawful for her to live wickedly, provide for her with a dispensation." But if Michael is not burdened by the demands of justice, he is certainly burdened by the demands of charity. However, Michael did not fulfill either the duty of obedience to the Holy Congregation, nor the duty of charity, when he offered no cooperation in order to free his wife from the instructress. And therefore, he is to be considered to have committed something against the sacrament, because of such an omission, for he who does not do what he ought to do, seems to do the opposite of what he does not do, I. 1 2 1 ff. de reg. iur. Therefore, since it is within Michael's power to fulfill the duties imposed upon him, both by the Holy Congregation and by charity,

[*Latin ed. p. 118*]

Regarding dispensation from marriage, it follows that, as long as the individual does not himself fulfill this obligation, the petition for dispensation should in no way be accepted. Therefore, it was customary to examine the question: Whether one should adhere to or depart from the decisions made in a particular case. To this question, the Sacred Congregation, after again considering the matter, provided an answer on March 23, 1878, in *In Decisis*. From which, the following may be gathered:

I. That there has been moral certainty regarding the lack of consummation of the marriage, arising from the totality of evidence: namely, from the testimony of the spouses, whom anyone can consider to be credible, and from the testimony under oath; and that there were not lacking causes for the dispensation.

II. That the danger of apostasy and incontinence, on the part of one or both spouses, the dissociation of souls, without hope of reconciliation, constitutes a valid reason for granting a dispensation from a marriage that is valid but not consummated.

III. That the Apostolic See sometimes sends for an examination and inspection of the woman's body in the canonical process, if moral certainty regarding the lack of consummation arises from elsewhere: for example, when both spouses jointly deny consummation, together with sworn testimony of relatives, and with other concurring evidence, arguments, and supplementary proofs.

IV. To exclude the consummation of marriage, moral certainty is suf-

Translated by churchlatin.ai, a product of Boyne Archives

ficient; and it is not necessary to require the strict form of evidence prescribed by law, but demonstrative evidence; so that a dispensation may be granted even if something is omitted, provided that there is moral certainty regarding the lack of consummation.

[*Latin ed. p. 119*]

119. Dispensation from Matrimony. V. It is indeed necessary to require that moral certainty which would assure a prudent man, considering the circumstances, that there has been no consummation [of the marriage]; and this can be achieved by the confession of the spouses, confirmed by an oath taken before seven witnesses. VI. No one should doubt that the Roman Pontiff, by ordinary power, can dispense from a marriage that is valid but not consummated, whenever there is a just and reasonable cause that warrants the dispensation; because the supreme law in granting dispensations is always considered to be, and is, the salvation of souls.

CONCURRENCE. On January 26, 1878. Summary of the case. The Archbishop entrusted the vacant Archpriestship of the Church of St. Nicholas in the Archdiocese of B to the priest John C, who had previously, both as administrator and as vicar, diligently governed the same church on several occasions. Subsequently, by official letters, he announced a concurrence [a competition for the position], and warned that those who wished to participate should, within the time limit specified in the announcement, present their name and surname, along with the required documents, at the archiepiscopal chancery. Only two candidates were considered: the aforementioned John, who presented the required documents in a timely manner, and the priest Celestine A, who presented no documents. After the established date, after the deadline, and after the written statements of the candidates were reviewed, the Examiners, after approving Celestine, rejected John. John appealed to the Sacred Congregation of the Council, based on the Examiner's report, which he considered to be unfavorable and contrary to the apostolic constitutions, requesting that the proceedings of the concurrence be withdrawn from the archiepiscopal court and subjected to a new examination. The appeal.

[*Latin ed. p. 120*]

One hundred and twenty briefs, as is customary, were submitted to the Ordinary for information and opinion. Meanwhile, an anonymous petition from the faithful of that parish of Saint [Name of Saint] was transmitted to the Sacred Congregation against the morals and manner of life of the priest Celestine, requesting that information be received from persons deemed trustworthy. While this petition was being seriously considered by the Sacred Congregation, letters arrived from the Ordinary, in which the history of the case was recounted, and it was inquired whether, with due consideration, the proceedings could be approved according to the

Translated by churchlatin.ai, a product of Boyne Archives

canonical procedure. The Sacred Order ordered that the acts of the petition be transmitted; and it was determined that, in order to establish the matter, it was necessary to refer to the "Constitution" *s. m.* Benedict XIV, *Cum illud semper*, of December 14, 1742, "unless the aforementioned procedure" hindered the petition, concerning which the opinion of the Ordinary was also being sought. The Ordinary transmitted the acts of the petition. Regarding the matters presented in the anonymous petition, he stated that he had received information from trustworthy men, and that all, with only one exception, had stated that the things alleged against Celestine were not true. However, he concluded his letters by writing: "I must add that if I had known all of this beforehand, I would not have admitted him to the petition." Under these circumstances, it was decreed that the case be presented at the plenary sessions of the Sacred Congregation, and the parties were warned to present, as they wished, their rights before the same Sacred Congregation. After these preliminaries, the matter proceeded to the resolution of the doubt. But since the defenders chosen by the parties did not agree in formulating the doubts, those matters which are read at the end of this discussion were, by order, presented, leaving to the defenders the customary right to argue regarding the doubts raised on the day of the presentation of the case.

1. When the defenders chosen by the parties meet on a designated day before the Auditor, Reverend Father, Secretary of the Sacred Congregation, in order to jointly formulate a doubt, it sometimes happens that one wishes one doubt, and another wishes another. Then the Reverend Auditor formulates a doubt, which is written at the bottom of the page, as is customary, leaving to the defender the right to argue regarding the doubts proposed by him.

[*Latin ed. p. 121*]

Competition 121. Synopsis of the Dispute. The Defender argued: 1. That the competition was valid. 2. That the parish should be assigned to his client. He maintained the validity of the competition both externally and internally. Externally, he observed that the competition had been held according to the laws of Trent and the apostolic Constitutions; for edicts had been promulgated; a diligent inquiry had been conducted regarding the age, morals, and other requirements of the candidates; and, on the appointed day, the proceedings were held before the Vicar General and three pro-synodal examiners. These, after mature deliberation, both regarding knowledge, morals, and finally regarding other qualities, declared the priest Celestine to be suitable, while rejecting John. DEFENSE OF CELESTINE. Celestine maintained the validity of the competition primarily on the basis of doctrine and knowledge, in which he surpasses his rival; which he endeavored to demonstrate from the answers given by his client to the questions that were proposed; and especially from

Translated by churchlatin.ai, a product of Boyne Archives

the authority of a certain examiner from the Theological Academy of the City; who, in a certain extrajudicial statement, asserted that John's answers were far inferior, since they contained many errors: among which he enumerated the proposition in which John wrote that he gravely sins, if, although compelled by necessity, he borrows money from a public usurer. Furthermore, he pointed out that John's submission to the competition was deficient in certain details. From these points, the Defender concluded that the competition should also be considered valid internally. Having established this validity, he maintained that, for the sake of expediency, the parish should be assigned to Celestine, because in the competition, there is considered to be a contract between the candidate and the Bishop, by virtue of which he who, after prior investigations regarding doctrine and other requirements, is declared suitable and worthy, acquires the right to the benefit.

[*Latin ed. p. 122*]

122. The concurrence must be obtained in such a manner that it cannot be invalidated except for a proven crime, according to the Sacred Rota, decision, *ioi*, p. 23, *cor*. Therefore, since Clement is not guilty of any crime, he maintained that, according to the law, he could not be deprived of his position. And indeed, he would have to be deprived of his position, either because he lacks knowledge, or because he does not possess the other necessary qualities. Regarding the first point, in addition to the judgment of the examiners, the opinion of the aforementioned censor of the Theological Academy is taken into consideration. As for the second, the Curia testified that nothing adverse was found against the aforementioned priest; moreover, he has performed various duties for the Church and, according to the testimony of a certain vicarious, he has always been a source of edification since his ordination to the priesthood. Therefore, the anonymous pamphlet should be considered fabricated, since it was published after the judgment of the examiners. Otherwise, the disputes of the parties would not be resolved, and it would not be in the best interest of the reputation and esteem of the Bishop, whose judgment would have to be overturned, either because he admitted the unqualified or because he admitted the perverse to the concurrence. Indeed, the defender argued that if anonymous pamphlets were heard in such a way that they could overturn the judgment of the examiners, then the matter of concurrences would be compromised, because no prudent person would wish to undergo such dangers, if access were open to fraud and calumny. From all of this, it was concluded that the parish should be conferred upon Priest Clement, both because of his knowledge and because of the qualities with which he is adorned. DEFENSE OF JOHN. - On the other hand, the defender of John contradicted, arguing that the report of the Examiners could in no way be substantiated, and that there was no valid concurrence due to a defect in

Translated by churchlatin.ai, a product of Boyne Archives

form. If this validity were admitted, the parish would be assigned to John. The advocate argued that certain things prescribed by law for a valid concurrence had not been fulfilled, and that if these were omitted, they would render the concurrence null. Indeed, in the aforementioned encyclicals of the Holy Congregation of the Council, ordered by Clement XI in the year 1721, it is prescribed that the original documents of the concurrence, closed and signed, or at least one of them, should be sent to the judge of appeal.

[*Latin ed. p. 123*]

A gathering of candidates (concursus) must have a genuine example of it, presented by the Chancellor of the gathering, and another copy, and be heard before a Vicar or another person holding an ecclesiastical office, whom the Ordinary shall choose. Furthermore, it is necessary that each answer, and each word, when presented by each candidate, be signed not only by the one who wrote it, and by the Chancellor of the gathering, but also by the examiners and by the Ordinary or his Vicar, who were present at the gathering. Such a form was entirely omitted in this case; indeed, the record of the proceedings, transmitted to the Sacred Congregation, was not presented by anyone, nor were any of the answers, nor any of the words, except for the last, signed; hence, the Advocate concluded that the nullity of the gathering could not be doubted. It could not be doubted that these were introduced as substantial requirements, for Reclusius, in *De concursibus*, Title II, question I, number 89, writes: "For the substantial requirements are those which are to be observed... which were ordered by the Most Holy Congregation of the Council, by the command of Clement XI, in the aforementioned Decrees, and confirmed and better explained by Benedict XIV in his Constitution." Since these have always been prescribed, and are also desired in the Tridentine Decree and the Piana Constitution. All of this was confirmed by a resolution of the Most Holy Congregation of the Council, in one session, on September 2, 1738, in which the nullity of the gathering was argued because not each answer, nor each word, was signed, according to the letters of 1721 and the Constitution of Benedict XIV, and the question was posed: "Does it follow that the gathering is null in this case?" The answer was: "Affirmatively." The Advocate found another cause for nullity in the fact that the examiners had only considered the doctrine of one candidate. This was manifest in the case of the priest Celestine, since the Chancellor openly admitted it; and it was certain in the case of John, because otherwise Celestine could not have been preferred to him. Furthermore, it is evident...

[*Latin ed. p. 124*]

The competition of 124 stated, both from the acts of the competition and from the practice of the Curia, that before the Holy Congregation of Councils, another case of the same Diocese was presented in the year 1875. The

Translated by churchlatin.ai, a product of Boyne Archives

Ordinary reported that in that Diocese, there existed a custom of not considering the qualities and merits of the candidates unless they had previously demonstrated merit in doctrine and science. With these things stated, it was affirmed that the examiners had not investigated the qualities and merits of the candidates, but had remained within the limits of doctrine and literature alone. This method, however, was declared to involve a nullity, because, according to the disposition of the Council of Trent and the Constitution of Benedict XIV, science and qualities, and merits, ought to be closely associated. Hear Reclusius, *Op. cit.*, p. i, Title 5, n. 16 and following. There, he writes: "It will likewise be a bad report from the examiners, if they have remained within the limits of doctrine, and have not at all investigated morals, and other qualities suitable for the governance of souls." Council of Trent, Session 24, chapter 18, where it is written: "After the examination has been completed, those who have been judged suitable in age, morals, doctrine, prudence, and other things suitable for governing the vacant Church shall be announced." Then Pius V in the Constitution *I?i conferendis*; and Benedict XIV in the Constitution *Cum illud*; and the Doctors are unanimous in this, and Massobrio, in his practice, *Cancel.*, request 4, part 1, n. 1; Conrad, in his practice of benefices, book 3, chapter 2, sub. n. 23; and the Holy Congregation of Councils in the competition in Monopoli, April 28, 1759; in the Salernitan or Capua parish register, February 1760, § Examiners; in the Melevitan parish register, April 14, 1764, § Response; and in the Aquitan parish register, January 1865, § Synodus. And the Rotale Auditorium in the Caslana parish register, March 18, 1751, § 3 and 8. Migazzi confirmed this before the same, on June 28 of the same year. Thus, a bad report from the examiners, due to the non-observance of the prescribed and ordered form, brings about an undeniable nullity of the competition, according to the cited authorities, and so on.

[*Latin ed. p. 125*]

The competition of 125 candidates, "especially in the case of the Holy Congregation of the Council of Trent, August 28, 1745, as proposed in Policastrensis, § Altero-". Finally, the examiner, as if accusing, declared the report of the examiners to be bad, because they had approved and deemed capable someone unworthy; and he maintained that the unworthiness of Celestinus should be proven, both from an anonymous appeal and from information from the Archbishop concerning Celestinus. I must also add that if I had known all these things, I would not have admitted him to the competition. Therefore, he concluded that there was no doubt about the nullity of the competition and the badness of the examiners' report in the case. However, even assuming the validity of the competition, he maintained that Ioannes, not Celestinus, deserved the approval. To demonstrate this, he pointed out that the answers to the questions posed were so poor and weak that it was easy to see that both candidates were either very little

Translated by churchlatin.ai, a product of Boyne Archives

or not at all versed in moral theology. This he confirmed with the authority of two theologians. However, even conceding that Celestinus was somewhat superior to Ioannes in knowledge, he maintained that it was certain that Ioannes far surpassed the other in the qualities required. Indeed, he said that Ioannes was of more advanced age, having been approved for several years, having undergone a preliminary examination, having been admitted to hear the confessions of both sexes, having been a director of the apostolate of prayer, having rebuilt a public chapel at his own expense, and having served as a coadjutor in the care of souls for several years, and having also fulfilled the duties of an economist with the full satisfaction of the Ordinary; therefore, he was not only to be approved, but was to be judged more suitable than the other. All of this, as mentioned above, he confirmed with the testimony of the theologians. Indeed, if such requirements, as the Council of Trent and Benedict XIV command, had been associated, Ioannes would have been approved just as Celestinus, unless perhaps he had deserved to obtain a higher degree of approval. Therefore, since, guided by justice, Ioannes should be included among the approved, he added that only the question remained as to whom the parish should be assigned.

[*Latin ed. p. 126*]

126 He stated that it seemed to require only a small effort to demonstrate this; for the Council of Trent, in the preface of the decree concerning reform, Session 14, admonishes bishops that clerics, and especially those to whom the care and governance of souls is entrusted, should excel in moral integrity; for if they permit clerics to be of corrupt and wicked morals, how will they be able to reprove the laity for their vices? And how can priests correct the laity when they themselves tacitly admit the very things they condemn? Hence, Reclusius writes in his work, *op. cit.*, vol. 1, no. 25, that – "Therefore, he will be entirely unworthy to undertake the care of souls who will become a scandal to the people. For I cannot conceive how such a person can edify the people by example, and freely reprehend those vices in others which he himself is stained with." With these considerations in mind, the defender maintained, there could be no doubt that the parish should be assigned to John. For he presented testimonies from his instructors, demonstrating from the very beginning signs of piety and integrity. The rector of the seminary testified to the excellent account of his life during the time he was there. After being ordained to the priesthood, he did not abandon his former conduct, but rather improved upon it; indeed, the Curia entrusted him with the most important duties, and the difficult governance of souls during these calamitous times, highly commending his zeal, piety, and prudence. And such qualities shone so brightly in him that even a Syndic, related by blood to Celestine, could not deny due testimony of praise. Furthermore, the defender urged that his client should

Translated by churchlatin.ai, a product of Boyne Archives

be preferred, arguing that if the attention of the assembly were turned to the life and morals of the other candidate, an anonymous letter sent to the Sacred Congregation, or even a casual reading of it, would reveal falsehoods. For, setting aside what the others insist upon, that information should be obtained from reputable men, the Archbishop himself wrote: "If I had known all these things before the assembly, I would not have admitted him to the assembly." Moreover, the defender maintained that John should be preferred because he possessed the experience and knowledge that are fitting for a pastor.

[*Latin ed. p. 127*]

The number 127 [candidate] surpasses the others in the matter of souls, having borne such a burden many times with merit, and according to the opinion of the most illustrious Piton in *Disputationes Ecclesiasticae*, 108, n. 17: "In this matter, he is more suitable who possesses a greater aptitude for exercising the ministry; certainly, there is no doubt that Anthony is more apt and worthy, who has practically exercised the ministry in comparison to his opponent, who has nothing other than a miserable and very superficial theoretical knowledge demonstrated in examinations, and who postpones practice and experience as if they were less secure, etc. Moreover, because the service itself undertaken in the disputed parochial matter merits an unquestionable legal precedence for several years, so that in any competition, he should always be preferred who has devoted his effort and labor to the service of the Church, according to the words: 'No one unwillingly,' *Dist.* 61." Finally, the Orator concluded that John should be set aside, because the people loved him greatly, cherished him, and desired him as their parish priest, whereas, when choosing pastors for souls, those who enjoy the affection of the people should be preferred. Thus, after *Canons Nec emeritis*, *Dist.* 61, Piton, *loc. cit.*, n. 24 and following. These points having been debated by both sides, the following questions were proposed. I. Does it appear that the Examiner had a bad opinion in this case? And, to the extent that it is affirmative. II. To whom should the parochial church be assigned in this case?

RESOLUTION. The Sacred Congregation of Councils, having discussed the case on January 26, 1878, responded to the first and second questions: A new competition is indicated.

[*Latin ed. p. 128*]

CONCURSUS 128 CONCURSUS. 1 Die 4 mens Martii anno 1878. Compendium facti. Cum praebenda parochialis Ecclesiae Cathedralis NN vacaret, a Ordinario indictus est concursus ad tramites sacrorum canonum. Solum duo sacerdotes, sub periculo, se obtulerunt, qui, requisitis exhibitis, statuto die, novem quaestiones a quatuor examinatoribus propositas enodandas curarunt. Insequenti die, examinatores coram

Translated by churchlatin.ai, a product of Boyne Archives

Ordinario, scriptis concurrentium expensis, ambos reprobarunt. Hic duo notanda: 1. Examinatores inter se statuerunt, « illum, ex concurrentibus, maximum approbationis et idoneitatis gradum fore « assecuturum qui triginta sex meritorum puncta reporteret; « illum vero esse reiiciendum et penitus reprobandum, qui « ne puncta quidem decem et octo cum quadrante attingeret ». 2. Consuetudinem vigere in illa Curia perpendendi requisita concurrentium, tunc tantum cum quoad scientiam approbati sunt. Quapropter in casu ambo fuerunt concurrentes reiecti, quia unus novem, alter quatuordecim puncta cum dimidio retulit circa scientiam. Primus acquievit: secundus vero, aegre ferens examinatorum iudicium, ab eorum relatione, tamquam mala, appellavit ad S. Congregationem Concilii, petens tum concursus revisionem, tum ut ratio haberetur requisitorum quae ipse exhibuerat.

Has duas causas veluti in unum coniungere opportunum duximus, quia licet una de parochiali, altera de poenitentiaria agat praebenda, tamen eamdem fere speciem praeseferunt, eamdem appellationis rationem habent, eidemque innituntur principio, ac proinde ad easdem porriguntur conclusiones.

[*Latin ed. p. 129*]

The number of candidates was 129; and if, after considering all matters together, it deserved approval, it requested the granting of the position. The Ordinary, when consulted regarding the customary procedure for information and a vote, considered the omitted examination of the requirements to be a reasonable objection; however, he added: "Since, on the one hand, the custom or practice of which we speak exceeds a hundred years, and, on the other hand, according to Trent and the aforementioned Constitution (namely, Constitution *Cum illud* of St. Benedict XIV), the judgment of the examiners seems to be of a combined and cumulative nature, namely concerning doctrine and qualities together... therefore, I transmit the proceedings of the competition together with the list of requirements." After these words, and after a vote from one of the Consultors of the Sacred Congregation, a decree was issued: "The custom of the examiners in determining the suitability of the candidates, as proposed, is not to be maintained; therefore, in the case in question, the examiners must prepare a new report, considering together all the remaining requirements along with the candidate's qualifications." This resolution was not new, but referred to another case, dated August 26, 1854, concerning a competition in Lucania, in which the response had been: "The Pro-Synodal Examiners appointed for the competition should also report on the other qualities of the priest Ceselli, according to the form of the Constitution *Cum illud* of St. Benedict XIV." The examiners did not disregard the aforementioned decree, and considered that they could not again express their vote, both because they had followed the practice of the Curia, and because it was

Translated by churchlatin.ai, a product of Boyne Archives

not permissible for those who had rendered a judgment according to the dictates of conscience and justice to change their opinion. Then, a decree was issued: "Let it be recorded on the sheet; and the case was debated in the plenary sessions of the Sacred Congregation. A summary of the debate: DEFENSE OF THE APPLICANT. The advocate for the applicant presented his defense, divided into two parts, and in the first part, he argued that the judgment of the examiners should be combined and cumulative." (Acta, vol. XI, p. CXXIII, 9).

[*Latin ed. p. 130*]

130 He argued that the requirements, both with regard to knowledge and to merit, were different in the two cases; in the one, he said that fewer votes had been given in favor of his client than he had actually deserved in the matters proposed for consideration. First of all, he pointed out to Benedict XIII that his Pastoral Constitution for Italy and the adjacent islands, which established the method for conferring the office of penitentiary and theologian, had equated it with that of a parish priest, except for one quality: that of the Synodal examiners; and that, according to the law of Trent, session 24, chapter 18, De Ref., the judgment of the examiners should extend to both merit and knowledge in order to confer the office. He maintained that the method of cumulative judgment was clearly derived from the Council of Trent, citing the aforementioned passage, where it is stated: "Once the examination is completed, those who are judged suitable in age, morals, doctrine, prudence, and other things suitable for governing the vacant Church should be declared." And he affirmed that this law had been confirmed in the Constitution *Cum Illud* of Pope Benedict XIV, who had expressed the same doctrine in his work *De Syn. Dioec*, Book 4, chapter 8, section 3, where it states: "The examiners must not only test their knowledge, but must also give due consideration to the probity of their morals, prudence, age, and other qualities that are necessary for those to whom the care of souls is entrusted." This opinion is followed by Reclusius - *De Concurs.*, page /, title 3, number 16; Antonellius, *De regimin. Eccles. Epis.*, Book 3, chapter 3, number 1, and others commonly; and also by the Sacred Congregation of the Council. Finally, he pointed out that this practice was observed in the City [Rome]. From these points, he concluded that the judgment of the examiners should be joint and cumulative, and therefore, in this case, a new report was necessary. He asserted that all of this did not contradict the resolution of the Sacred Congregation in Anagni on July 20 and December 14, 1812, in which it was stated that the validity of a recurring competition, even if the candidate was rejected only with regard to knowledge, did not...

[*Latin ed. p. 131*]

The number 131 of applications having been considered, it was deemed

Translated by churchlatin.ai, a product of Boyne Archives

that they had not been sufficiently examined. It was stated that there was no objection, because it had not been demonstrated that the examination of the applications was invalid, but it was not proven that it was null; therefore, in view of the fact that the examination was carried out, its validity must be maintained until the contrary is proven. It was added that the case of Anagni was very different, because out of seven applicants, only two were approved; and one of those who were rejected had requested that the examination be declared null and void, because some had used lights in violation of the Bishop's prohibition. Therefore, given the doubt about the validity of the examination, since those who were approved had a right in the matter, the decision could not be considered to be a declaration of the nullity of the examination, because the right of those approved prevailed. In the second case, it was stated that both applicants had been rejected, solely based on their knowledge, which was found to be contrary to the decrees of the Council of Trent and the constitutions of the Popes, and that the rejection was due to a bad report from the examiners. After these remarks, the Advocate, turning to the second part of his defense, argued that his client was entitled to be admitted, given the excellence of his qualifications, since he held a doctorate in both Canon and Civil Law, had completed his pastoral duties in the parish of Lodi, had faithfully and diligently performed the duties of preacher and confessor, as testified by the Church authorities. He stated that, considering these qualities and virtues, so many points of merit were accumulated that his client deserved the highest degree of approval. He wrote that the resolutions given were judged too harshly, because he maintained that the applicant had not answered the third, sixth, seventh, and ninth questions so poorly as to deserve only those points that were attributed to him by the examiners. Therefore, he concluded that his client should be admitted, both because of his qualities and qualifications, and because of the answers he gave to the questions; and he implored that the examination be approved, because he considered it to be a necessary step.

WHAT WAS OBJECTED. On the other hand, in opposition to what had been presented, it was pointed out that the proposed question could be considered in two ways.

[*Latin ed. p. 132*]

132. The question arises, with respect to the matter under consideration, whether, namely, the custom of the Curia can be maintained, namely, to the extent that an account is taken of the exhibited qualifications only if the candidate has attained a determined level of scientific merit; or whether, namely, such a method, as it is contrary to the form of the examination established by the Council of Trent, is void. It was argued that the aforementioned practice could be maintained based on a custom lasting more than a century, which is considered to be of venerable antiquity, as is generally held in the *Thesaurus Resolutionum Sacrae Congregationis*, and

Translated by churchlatin.ai, a product of Boyne Archives

especially in the *Surrentina* – concerning processions, April 16, 1820, § *Enimvero*; and in the *Ausculana* – concerning rights, February 18, 1821, § *Ad constituendum*; and that this alone has the force of supreme law and authority, so that he who possesses it is said to possess that which the supreme authority can grant by right or grace. Therefore, it was argued that ecclesiastical laws, even if they simply and generally prohibit the introduction of such a practice, can be set aside and moderated, as Reiffenstuel states in *Iure Canonico Universali*, book 1, title 3, number 49 and following. Furthermore, it was added that this custom cannot be opposed, as it is considered to be a corruption, since it is contrary to the law of Trent, which requires examiners to inquire into the age, morals, doctrine, and prudence of the candidates; for if scientific knowledge is lacking, it seems useless to consider other merits, since the candidate, already deemed unsuitable due to this one deficiency, is already judged to be unfit; therefore, the aforementioned practice does not at all reject the cumulative judgment of scientific knowledge and qualifications, but rather relieves the examiners from useless labor. In this matter, it was affirmed that there was a semblance of the case of *Anagnina* – concerning examinations, cited above, because it was argued that the pro-synodal examiners had not taken into account the qualifications of that case. Therefore, if the question was raised: "Does the examination for the parish of Saint Pancratius involve a nullity in this case?" the answer was: "No"; it was stated that no reason could be given to answer otherwise in this case. However, it was urged that the aforementioned custom cannot be maintained and must be rejected as a corruption, and that nothing further should be derived from it.

[*Latin ed. p. 133*]

The concurrence of 133 [votes] is derived from the favor of the concurring [cardinals]. Indeed, if the Council of Trent and the Supreme Pontiff Benedict XIV have established a formal and cumulative judgment of science and requirements, then, if this form is disregarded, it is necessary that the concurrence itself be invalidated. However, this cumulative judgment is clearly derived from the aforementioned Constitution *Cum illud*, § 16, in which examiners are ordered to associate with the doctrine, honesty of morals, gravity, prudence, services rendered to the Church, and all the ornaments of virtues, etc. It was added that this was the opinion not only of all the doctors, but also of the same Sacred Congregation, as is reported in *Reclus. De conc.*, p. 2, title IV, Pignatelli, *co?is*, i. n. 33; *S. Rota*, Dec. 382, n. 2, p. 3, Dec. 334, n. 12 and 13, p. ri, recent; Fagnan, cap. Eam te - *De aetat. et qualit.*, praef. n. 13, which states that the Sacred Congregation decreed on August 2, 1607, that if the examiners do not report that the candidate is suitable in all respects as required by the Council, the concurrence is null. The same intention of the Sacred Congregation is found in Benedict XIV, in the work *De Synod. Dioecesana*, book 4, chapter 8, n. 3, regarding

Translated by churchlatin.ai, a product of Boyne Archives

a certain case in Abulen. Finally, the previous resolution of January 26, 1878, which we cited, was presented. From these, it was concluded that the action against the recurring [candidate] should proceed; either the custom of the Curia was upheld, and then the judgment of the examiners, even if they disapproved, remained in its firmness; or the law of Trent was strictly adhered to, and then the concurrence was null and invalid due to the violation of the substantial form, and the concurring [cardinal] should have faced a new danger in order to obtain the penance. After these points were raised, the following questions were proposed: I. Does a bad relationship exist between the examiners in this case? And, to the extent that the answer is affirmative, II. How should provision be made in this case?

[*Latin ed. p. 134*]

The 134th Session of the Congregation of the Holy Council, having discussed the matter on May 4, 1878, responded to the first and second questions: It is declared that a new competition is to be held, observing in all respects the form of the Constitution of Benedict XIV. THEREFORE, THE FOLLOWING IS DEDUCED: I. In the granting of benefices through competition, despite the appeal of one of the candidates, the Bishop is not obliged to suspend the granting of the benefice, but may, in the meantime, grant it to the one he judges more worthy. II. According to the Council of Trent, Session 24, chapter 18, concerning reforms, and according to the aforementioned Constitution of Benedict XIV, the examiners must consider both the doctrine and other qualities or requirements of the candidates, and, considering all things together, render judgment on their suitability or unsuitability. III. This comprehensive and cumulative judgment pertains to the essential form of the competition, so that a disregard for this form renders the competition null. IV. It is not permissible to disregard the qualities and requirements of the candidates, unless they have previously demonstrated approval regarding knowledge and doctrine.

It is certain that there will be those who will accuse us of contradiction, since our conclusions differ somewhat from those found in Volume VII, pages 150 and following, of these periodicals. Indeed, we know that there are those who defend a view contrary to ours, perhaps led by the reason that in some dioceses there is a custom of inquiring about the qualities and merits of the candidates, only when they have reached certain levels of knowledge, and are in danger of failing. But whether we or they follow the correct opinion, the reader will judge. As for the conclusions that are read in the aforementioned Volume VII, it seems to us that the author (whom we otherwise hold in the greatest reverence) has extended his reasoning further than was appropriate; for he was dealing with a case in which several irregularities had occurred. Therefore, if the Holy Congregation did not wish to consider them, it may have had some secret reason that is not apparent to the reader. Furthermore, although the intention of the

Translated by churchlatin.ai, a product of Boyne Archives

Holy Congregation, as described there, may have been as stated, such premature conclusions would be unwise, since there are countless resolutions from which we are taught a contrary doctrine. And it seems imprudent to deduce from a single resolution that the Holy Congregation has departed from ancient jurisprudence. Finally, the author of those conclusions...

[*Latin ed. p. 135*]

I. When the candidates are equal in knowledge, or if there is only a slight difference, the one who excels in honesty and gravity of character should be preferred; and the one who would be a cause of scandal to the people should be deemed unworthy.

II. Upon appeal, the documents must be transmitted by the tribunal from which the appeal is made, either the original proceedings of the competition, closed and sealed, or a certified copy, authenticated by the Chancellor of the competition and another notary, and presented and heard before the Vicar or another person holding an ecclesiastical office, whom the Ordinary shall appoint, and also signed by the examiners who were present at the competition.

III. According to the Instruction of the Holy Congregation of the Council, each answer and every word, as presented by each candidate, must be signed not only by the one who wrote it, and by the Chancellor of the competition, but also by the examiners and by the Ordinary or his Vicar, who were present at the competition.

IV. According to Reclus [On Competitions, p. 2, Question I, Title 2, On the Defective Selection], all of these matters must have been carried out according to the established form, so that the competition cannot be upheld if any of them have been omitted. It is well known that not everything descends from the aforementioned cause, and therefore, with the utmost diligence and effort, he collected other documents, wishing to persuade his readers of his opinion; so that, falsely, some conclusions are often quoted, as if they were the opinion of the Holy Congregation. But those who oppose this practice with the custom of some diocese, should demonstrate that it can and must be supported, and that a custom which breaks the unity of discipline, which tends to the detriment of the Church, and which directly contradicts the law promulgated by Trent, explained and confirmed by the Supreme Pontiffs, and approved by an unbroken series of resolutions by the Holy Congregation of the Council, is permissible. If the knowledge of the candidates is to be considered separately, and if they must first merit approval in this regard, as explained in Chapter 18, session 24, of the Council of Trent, which orders that the examiners must renounce any candidates who are deemed suitable in age, morals, doctrine, prudence, and other things suitable for governing the vacant church, how is it explained that Benedict XIV, in his Constitution "Cum Illud," wrote, according to the mind of the Holy Congregation: "the examiners would fail in their duty if

Translated by churchlatin.ai, a product of Boyne Archives

they were only judges of doctrine" - and he ordered - "that the ornaments of virtue should adorn doctrine."

[*Latin ed. p. 136*]

136 MARRIAGES. December 15, 1877, and March 23, 1878. Summary of the case. After six years of marriage, Count Z., aged 36, and Countess F., aged 24, petitioned the lay judges, on August 25, 1877, for the dissolution of their marriage under the Austrian Code. As the reason for this request, they alleged the impossibility of a harmonious union. If examiners reject candidates who have not attained the required level of knowledge, it is clear that they are not judging solely on the basis of knowledge, but are also considering other qualities, and are therefore failing to fulfill their duty. How is the resolution of Fagnano to be explained (Cap. Eam te, De aet. et qualit. praef. n. 15), in which the Sacred Congregation held that if the examiners do not report that the candidates are suitable in all respects, as required by the Council, there is no concurrence? And how are the two previous resolutions cited by us to be explained? Furthermore, it requires little discernment to see how much the praised practice deviates from sound reason; for it is easily possible that a man distinguished by piety and prudence, who has rendered illustrious services to the Church, and who is endowed with all virtues, would be rejected in favor of a newcomer and inexperienced person, simply because in a competition where fortune plays a significant role, he would be lacking by half a point. Consider briefly two candidates: one recently emerged from school, lacking in prudence, gravity, experience, and perhaps even integrity; the other endowed with excellent morals, honesty, prudence, more than sufficient knowledge, and all other necessary qualities. If the former surpasses the second by half a point in the competition, the second should be rejected, and the former approved. And yet, who would be more deserving of being judged suitable? It may be objected that the ignorant should be kept away from parochial duties, but we are not speaking of those who are completely devoid of all knowledge and are utterly incapable of undertaking such a burden; but of those who, endowed with sufficient knowledge, excel in other qualities compared to those who in the aforementioned competition have only demonstrated a superficial understanding. Our rule cannot be false, for the administration of a parish requires more experience than knowledge. If people lacking any knowledge were to undertake this task, they would very rarely, even if they accumulate merits through prudence and other qualities, achieve victory. Furthermore, our thesis is not whether the uneducated should be rejected, but whether, according to the Council of Trent and the Constitution of Benedict XIV, the judgment of suitability should be cumulative or disjunctive. Our opinion is that the examiners, when rendering a judgment

Translated by churchlatin.ai, a product of Boyne Archives

of suitability, must consider both knowledge and all other requirements.

[*Latin ed. p. 137*]

Marriage 137. As defenders of the marriage, two experts also skilled in the medical and obstetric arts were appointed to examine the bodies of both spouses. These individuals, fulfilling their assigned duties, issued a report under oath; declaring the Countess to be afflicted with a relative impotence; while the Count, on the other hand, suffered from absolute impotence; and that this impossibility of consummation had existed prior to the marriage. The judges, considering this report, pronounced the marriage to be null. This judgment was confirmed by two higher tribunals. Then, Archbishop L. was consulted, as an ecclesiastical judge, and he was requested to also declare the marriage null. The Ordinary transmitted the petition to the Sacred Congregation of Councils; and, noting that a new process would not introduce anything new, given the serious difficulties presented by the circumstances of place and time, he proposed that a dispensation from the marriage, as valid but unconsummated, be obtained. Having obtained permission from the Most Holy Father, certain instructions were transmitted to the Archbishop, instructing him to employ the procedures of civil law for ecclesiastical purposes; and to conduct a new process, in which an oath would be required both from the spouses and from seven witnesses; a defender of the marriage would be appointed; the experts previously employed would be examined formally and separately; and their report would be presented to three other experts for examination. The Archbishop reported that these prescriptions could not be fulfilled: because the spouses were reluctant to submit to a new examination; and because, according to the instructions issued by the Archbishop of Vienna in the year 1855, and which are in force in the ecclesiastical courts of the Austro-Hungarian Empire, neither an examination by seven witnesses nor an oath from the spouses is required. Therefore, in order not to give the spouses an opportunity to complain about an unusual strictness, a new permission was obtained from the Most Holy Father for a dispensation from the canonical process. Consequently, it was granted to the Archbishop to use the records of the civil court to the effect of ascertaining and determining the cause proposed by the parties regarding the nullity of the marriage, with a defender of the bond appointed ex officio.

[*Latin ed. p. 138*]

Of Matrimony, 138. Having accepted these decrees, the judges delegated by the Archbishop, proceeding in the case on July 18th of the aforementioned year, pronounced: "1. The marriage... is null, due to an absolute and incurable impotence, which existed even before the contract of this marriage, and which, as such, has been duly proven by expert medical witnesses, rendering the husband incapable of performing the marital duty,

Translated by churchlatin.ai, a product of Boyne Archives

and therefore invalid. 2. The aforementioned Count Z. is not to be admitted to contract any other marriage henceforth." The plaintiff in the marriage appeal appealed to the Sacred Congregation. Count Z. also appealed against the second article of the sentence, simultaneously requesting that the sentence be declared invalid with regard to this part, or that a dispensation be granted from the valid but unconsummated marriage. A concise discussion. It is contended that it is sufficient to prove the impotence of Count Z., whether it be absolute or relative; provided that the impotence is permanent and incurable. *Schmalzgrueber, lib. 4, tit. 15, n. 38.* If the impotence is permanent, it must be determined whether it is relative or absolute. If it is relative, it invalidates the marriage only with respect to those particular persons with respect to whom the impotence exists. If, on the other hand, the impotence is absolute and precedes the marriage contract, it invalidates the marriage with respect to all. The defender proves the permanent, incurable, and pre-existing impotence of Count Z. from the confession of the Count himself, made in the aforementioned pleading, and from the testimony of the medical witnesses, who affirm that he suffers from atrophy of the testicles. Zacchias describes such atrophy in *Quaestiones Medico-Legales*, vol. i, 285, n. 41, as follows: "There is not much difference in nature between atrophy and paralysis; that is, a wasting and dryness, in which the body or a part of the body no longer receives nourishment, and naturally, as some parts die, none succeed them; *summa mades*." THE DEFENDER OF THE WOMAN.

[*Latin ed. p. 139*]

139. Hence it comes to pass that atrophy of affection leads to perpetual impotence, and that one can never perform the conjugal act. To demonstrate this more clearly, the defender of the woman added that the Count had not lost his virginity after six years of marriage. This is not the proper method of proof; for it is more advantageous to ascertain the truth through an examination made by experts than through an intermediary obstetrician.

1. The defender argued that the man's impotence was perpetual, based on a presumption of the law and on the lack of consummation of the marriage after six years of cohabitation, according to the decree *Rota post cons. Farinae, dec. 65 n. 4*, which states that if a marriage cannot be consummated after a three-year period of cohabitation, then the presumption arises that the impediment is perpetual. In this case, however, the judgment of the experts demonstrated the perpetuity of the impotence.

Furthermore, the incurability of the impediment adds to its perpetuity, as stated by Zacchia, *lib. g, q. 2, n. 4*. The expert physicians testified: "The defects mentioned [by the Count] cannot be remedied; for they do not consist of any deformation that can be voluntarily corrected, but rather in a defect in the regular functions of the genitals..."

Translated by churchlatin.ai, a product of Boyne Archives

Although the Count claimed to suffer from relative impotence, the defender continued, this in no way weakens the assertion of nullity: because the Sacred Congregation, as it can, uses the customary formula of reservation: "It is forbidden for the man to enter into another marriage, unless it has first been consulted with the Sacred Congregation." And because, through his procurator, before the ecclesiastical judges, he admitted the judgment of the experts, by which his absolute impotence was established, he requested that the nullity be declared based on the title of absolute and incurable impotence.

The perpetuity of the impediment does not require a three-year trial, as stated in *Cosci, loc. cit. n. 26*.

1. The Instruction of the Sacred Congregation, which you have in Volume I, page 439 of this publication, prescribes a bath to more safely ascertain virginity. However, it is not uncommon for the Church to base its judgment on the testimony of those who know, postponing the bath, as stated in the decree *Rota, post Zacchiam, n. 9*. The decree of the *Romana*, concerning the invalidity of marriage, of October 13, 1606, *cor. Penna*, and the decree of the Sacred Congregation of the Council concerning marriage, of March 21, 1863, also support this. Therefore, in this case, the defects of the process only affect the form, and not the substance.

[*Latin ed. p. 140*]

"If, through the examination of bodies, as required by the sacred canons, a permanent impotence is certain, evident, and indubitable, then the marriage must immediately be declared null, without a three-year trial period, with the oath of the spouses." In this case, however, a period of not three, but six years elapsed. Furthermore, the silence of the spouses for six years, according to Schmalzgr., book 4, title 15, paragraph 74, and Cosci, loc. ult., chapter 2, paragraph 33, "establishes that, through the examination of the woman's body, it is of no consequence whether she has complained within two months, because even after many years, she can claim virginity and allege the husband's impotence." Examples of nullities admitted after many years have been found in the Rota and the Congregation of Holy Councils. The defender presented, first of all, the testimony of three professors of the salutary arts, who declared the husband fit for carnal intercourse; and they did not perceive any atrophy in him. These same professors were asked whether a relative impotence could be admitted, that is, an impotence that a man may suffer with respect to his own wife; they replied that it cannot be determined with certainty based on medical data, although it can occur as a permanent and incurable condition with respect to a particular person due to specific physical circumstances.

DEFENSE OF THE HUSBAND. Rising against the thesis of both spouses, the husband impugned both the absolute and relative impotence, as well as the woman's virginity. First of all, he noted that although a dispensa-

Translated by churchlatin.ai, a product of Boyne Archives

tion was granted from the hearing of His Holiness, the canonical process does not aim to cause any detriment to the truth. For the dispensation was granted only for the purpose of civil actions, in order to ascertain and define the cause. Therefore, the actions themselves should only be considered to the extent that they are valid in themselves. And since one action that provided the foundation for the judgment of the ecclesiastical tribunal was the judicial examination, this must be called into question.

DEFENDER OF THE MARRIAGE BOND. Two experts admitted both impotencies: absolute impotence in the husband, and relative impotence in the woman. They declared the husband impotent because..."

[*Latin ed. p. 141*]

Regarding Marriage 141, concerning the atrophy of the testicles. But the husband himself refutes this claim of atrophy, seeking to obtain a favorable judgment through the testimony of other physicians, whose credibility he has already presented. The testimony of these individuals is no less worthy of consideration than the report of judicial experts; indeed, it is even more so, because they are three distinguished professors of the same healing art; whereas, of the two judicial experts, one is, in a certain sense, subordinate to the other. The junior of these held a lower position within the hospital; and therefore, their judgment cannot be considered entirely free and independent from either side; and, moreover, because they did not separately examine the body, nor did they separately express their own opinion, as the Most Holy Congregation of the Council prescribes in Instruction No. 22, August 1840: "Each expert, separately, shall examine the body, insofar as decency allows, and each shall submit a written report." There is no dispensation from this prescription, for as the Roman Rota states in Decree No. 392, paragraph 27: "When it is a question of the dissolution of marriage, which is a great sacrament, all diligence and caution must be employed, so that, as far as human frailty allows, all fraud and error may be excluded." The defender of the marriage, considering the matter more deeply, maintained the thesis that the husband was physically fit for intercourse at the time of the examination; because, even if the atrophy of the testicles is admitted, such a condition does not reach the degree that would render anyone impotent for marital acts. For, as Zacchias states in *Quaestiones Medicae Legalibus Communes*, Book I, title I, question 8, paragraph 41, a true atrophy requires consumption, dryness, and extreme putrefaction of the affected part. However, from the reports of the two physicians, this condition has not been established. Therefore, the defender of the marriage added, since the foundation derived from expert testimony lacks the necessary solidity to establish full certainty of impotence resulting from atrophy; and since there is no evidence of any defect in the woman, although she may desire the marriage to be dissolved, she has nevertheless declared herself incapable of entering into any other marriage. And therefore, she

Translated by churchlatin.ai, a product of Boyne Archives

immediately submitted herself to the examination of three professors, who declared her to be fit for carnal intercourse and free from any atrophy.

[*Latin ed. p. 142*]

142. In the progress of the marriage, it will be demonstrated that the husband may have recourse to a remedy, even if the actual impotence is acknowledged and admitted; however, because this infirmity would be accidental in this case, it should always be presumed that it did not precede, but followed, the marriage, as stated by Sánchez in *De Matrimonio*, I, 7, *disp. loj*, n. j: "When there is an accidental impotence, such as 'arising from... another disease... when it is not proven to have existed before the marriage, it is not presumed to have existed at an earlier time, but the presumption favors the natural quality, which is the power of coition.' Therefore, it is not necessary to seek to favor the marriage by presuming that the impotence followed it, for this would be necessary only where the presumption of law did not prove that the impotence was subsequent. Since the presumption, which arises from nature itself, proves it in this case, and with the cessation of all favor to the marriage, it is presumed that the impotence is subsequent, and therefore, it is valid." Regarding the woman, the defender of the sacrament stated that it is futile to base the claim of impotence, whether of one or both spouses, on the integrity of the woman. For while more recent Doctors believe that the problem of virginity is not insoluble, nevertheless, they acknowledge that the problem itself presents a great difficulty, especially in the case of remote defloration. Zacchia, *Quaestiones Medico-Legales*, lib. 55, t. 2, n. 2, addresses the matter as follows: "The coherence of the parts... can be restored by means of medicines, to such an extent that they not only equal, but even surpass, nature, as physicians note." This is prudently confirmed by the authority of the Sacred Congregation in the Instruction of the year 1840, when prescribing the use of baths, it ordered "that no space or moment of time be given to the woman, in which she might use any medical instrument, or any other trick." In the case before us, based on the woman's confession, we have that she attempted to fulfill the marital duty in previous times. Therefore, the defender stated, witnesses have expressed opinions on this matter, and in the investigation, they have not used due diligence to eliminate any deceptions.

[*Latin ed. p. 143*]

143. Concerning marriages, their judgment is to be considered imprudent and uncertain; therefore. Furthermore, the defender, urgently arguing, maintains that the judicial expertise was not only uncertain, but also erroneous, and that it could be inferred that the woman had been corrupted for a long time. Moreover, even if her virginity were established, it should not be inferred from this that the other spouse is impotent, nor should it lead to the dissolution of the marriage; for this is not a matter of a dis-

Translated by churchlatin.ai, a product of Boyne Archives

pensation from a valid and consummated marriage, but of the nullity of the marriage on the grounds of impotence, as the introductory document demonstrates. Therefore, the investigation of the woman's virginity is of little or no relevance to the case. As the Roman Rota states in Decree 14, number 10, after Zacch., "It is not valid to conclude that if the wife is found to be intact, then the husband is impotent, by a natural and permanent impotence, which is sufficient to dissolve the marriage." Furthermore, it is said that the spouses were not given great confidence; because the suspicion of collusion is aroused by the husband's eagerness, who, having barely received an initial sentence from the lay judges, seeks to obtain a new expert opinion from the doctors, which would exclude absolute impotence. With these premises established, the following question was to be resolved: "Whether the sentence of the Archdiocesan Court should be confirmed or overturned in this case."

RESOLUTION. The Sacred Congregation, after discussing the case on December 15, 1877, pronounced the following sentence: "The sentence of the Archdiocesan Court is to be reformed, so that Cornitus Z. is not permitted to enter into another marriage, unless he first requests and obtains permission from the Apostolic See."

PROCEEDINGS OF THE CASE. After a new hearing requested by the defender of the marriage bond, a new discussion was initiated, and the aforementioned defender presented the following observations. First, he indicated that a dispensation from the canonical process...

[*Latin ed. p. 144*]

144. Marriages which have been declared invalid by the Sacred Congregation are infected with the vices of deception and fraud; secondly, because the judicial expertise which provided the basis for that judgment does not provide moral certainty regarding the impotence of the aforementioned spouse. Regarding the first part, it is recalled that the Sacred Congregation, having learned that it would be difficult for the spouses of *novae* to undergo a physical examination, relinquished its authority and ordered that customary and more expeditious procedures be followed. These procedures in such judgments include the oath of the spouses, the examination by a medical expert, the verbal examination by experts, and the appointment of a defender of the marriage. However, the spouses made the execution of these salutary procedures so difficult that the Ordinary was forced to confess, "that I performed all and each thing exactly, unless insurmountable difficulties arose, which I feel myself to be ill-equipped to overcome." These difficulties were created by the spouses; and they were the principal cause or motivation for the dispensation from the process. And since, from these difficulties, that which concerned the method of verifying the impotence of the spouse, in which the primary and principal purpose of the process consisted, did not at all pertain to the truth, because

Translated by churchlatin.ai, a product of Boyne Archives

the spouse requesting dispensation from the examination by judicial experts was acting against his own conscience, hence the dispensation incurs the vices of deception and fraud, as stated by Reiffenstuel, *ius. can. I. i, t. j>, n. /8j. Finally, the report of the experts was examined according to the teachings of the *Scriptores Medicinae forensis*; and it was concluded that the expertise was entirely inadequate to induce certainty regarding the prior impotence of the spouse; and this especially because from that examination it is not confirmed that the spouse is impotent for carnal commixture. Having presented these matters again, the purpose was for the Most Eminent Cardinals to decide how the following should be resolved.

[*Latin ed. p. 145*]

Marriage, Question 145. Whether one should adhere to or depart from decisions made in a particular case. To this question, the Sacred Congregation responded on March 23, 1878, with: "In the decisions."

From which the following may be gathered:

I. The Apostolic See, by the fullness of its power, sometimes remits certain things in the canonical process, which, however, do not touch the substance of the matter, but only the external form; so that it may be lawful to safely investigate and discover the truth.

II. Indeed, all caution and diligence must be employed to ensure that the truth is ascertained, and that fraud and error are eliminated, as far as human frailty allows; when it is a question of the dissolution of marriage, which is a great sacrament before God.

III. The Holy See has granted dispensation in this matter once and again; concerning which, the ecclesiastical judgment on this matrimonial question has had civil actions as its sole basis: neither the spouses' oath, nor the testimony of a seventh witness, nor the use of a bath were required.

IV. It is not fitting to seek the dissolution of a marriage that has been valid for many years; for it is established by inspection that the wife can always claim and allege the husband's impotence.

V. It is certain that the husband's impotence, when proven, dissolves the marriage, if it existed prior to the marriage; if it is relative, it dissolves the marriage with respect to that or those persons, with respect to whom the impotence is present; if it is absolute, and preceded the marriage, it dissolves the marriage with respect to all.

VI. Among the causes of impotence are to be counted atrophy, or the consumption and wasting away of some part of the human body, and aridity; by which the body, or some part of the body, no longer receives nourishment, and is greatly affected by corruption.

Translated by churchlatin.ai, a product of Boyne Archives

Acta, vol. Xl, page CXXIII, 10.

[*Latin ed. p. 146*]

FROM THE DECREES OF THE HOLY CONGREGATION CONCERNING THE SUSPENSION AND REMOVAL OF BISHOPS AND REGULARS FROM PARISHES. Dated July 13, 1877, and April 12, 1878. Summary of the Case. In the parish of Fabricae, frequent disagreements and quarrels occurred between the parish priest, C., and other administrators, to the scandal of the faithful. Therefore, the Ordinary judged that, in order to resolve the disputes, the aforementioned parish priest should be removed from that administration. This was done by decree on August 11, 1869, and another parish priest from the vicinity was appointed in his place, and a new council was established. The parish priest, deeply aggrieved, opposed the other five administrators, whom he did not recognize as such, and who, according to some reports, were not distinguished by particular virtues. The council of the parish of Fabricae, in turn, complained to the Bishop about the unusual conduct of the parish priest, asserting that he lacked all zeal. Thus, having been deemed unfit to govern the parish and removed by the Bishop's judgment, it is also judged that he is unfit to guide the souls of the faithful, and, conversely, he alienates them from the Church. For he often refused to administer sacramental confessions, and he refused to administer the Sacrament of the Eucharist to those who had been absolved by another priest, even during the Paschal season. Based on these complaints and the frequent promises of the parish priest to leave the parish, the Ordinary wrote to him on June 26, 1876, as follows: "I have decided to inform you..."

[*Latin ed. p. 147*]

Regarding suspension and removal from the parish: We hereby declare that if, within fifteen days, counted from the date of these letters, you do not leave the parish as you have so often promised; or if you do not acknowledge, without any ambiguity or restriction, the decrees of Our Predecessor, by which the administrators of the Parochial Fabric were established, we will be compelled to inflict upon you a suspension from divine duties, in order to remove the scandal of a parish priest who is rebellious against his proper superior, and who is disobedient to the promise and oath he has made.

On June 29th, another complaint was addressed directly to the Bishop by 35 parishioners, who, with fervent prayers, requested that the parish be visited promptly, so that, with their own eyes, they might witness the cause of the events, and that the disorder might be eliminated. Upon learning of these matters from the Bishop, the opinion of another Ordinary, a neighboring bishop, was sought regarding this serious matter, who responded as follows: "It is necessary to attempt, by indirect means, to bring the priest's

Translated by churchlatin.ai, a product of Boyne Archives

mind back to obedience; and if these efforts prove fruitless, the penalty previously announced must be imposed without delay; furthermore, trusting in Divine Providence, any difficulty can be overcome, and, if necessary, the matter should be pursued through the canonical process, even to the deprivation of the parochial benefice."

On July 13th, the parish priest made a direct appeal to the Most Holy Father, presenting himself as unjustly persecuted. The appeal was referred to the Ordinary, who added: "For fourteen years, this parish priest has been administering that parish; in which his religion has been completely forgotten amidst quarrels and dissensions, and all things are tending towards ruin. Furthermore, I had even offered him a pension, and then threatened him with suspension, said the Bishop; but within the time allowed to avoid the penalty, the parish priest remained with me, promising to fulfill the decrees of my predecessor."

Among others who complained against the parish priest was a certain C., who asserted that all those who came to the balnea (Bagnols) health spa suffered scandal; he also alleged that there had been an abuse of funeral expenses, on the occasion of the funeral of his daughter, who had been joined to him in marriage, and that he would never allow the parish priest to baptize the child that his wife was about to bear.

[*Latin ed. p. 148*]

148. Of Suspension and Removal: On the contrary, four parishioners, having informed the Most Reverend Father in writing, stated that the Fabric [church council] was entirely devoid of religious spirit, that they were fiercely persecuting the parish priest, that the Ordinary was too trusting of the Fabric, and that the parish priest had committed no fault other than opposing the Fabric's unjust actions. And the parish priest himself, writing to the Most Reverend Father in his defense, presented a testimony from three other parish priests of the same Vicariate, attesting to the parish priest C.'s piety, prudence, and zeal. These matters were also transmitted to the Ordinary, who wrote back in a letter: "I write to you, my most beloved father, after the death of my most dear father, and God knows that, unless I were seeking the salvation of souls entrusted to me, I would have requested the removal of that parish priest, for he is the occasion of so much disturbance." On September 15th, the parish priest again defended himself, and the Sacred Congregation wrote to the Bishop, instructing him also to warn the parish priest before imposing upon him the penalty of suspension from divine duties. The Bishop, following the instructions, warned the parish priest, and promised him a pension if he would leave the parish. The parish priest again began to discuss leaving the parish, but, in addition to the expenses for damages incurred, amounting to 1572.39 florins, he requested that the pension be secured by a mortgage. The Provost replied to him, stating that the Curia was working with the Fabric so that the rights

Translated by churchlatin.ai, a product of Boyne Archives

of the parish priest could be defended in the manner possible; as for the mortgage, nothing could be done, since that was contrary to the customs of the Church. The parish priest responded with insults and harsh words, from which the Ordinary concluded that nothing could be accomplished. A summary of the arguments: THE RIGHTS OF THE PARISH PRIEST. It was observed that the parish priest could not be subjected to the most serious penalty of suspension from divine duties and other canonical warnings, for the simple reason that he had not abandoned the administration of the Fabric after the decree issued in the year 1869. Nor is it permissible to object that these formalities should be observed when...

[*Latin ed. p. 149*]

The suspension and removal from a parish must be carried out solemnly through the judicial process; however, it may also be carried out extrajudicially, and the Superior may impose a precept under the penalty of suspension. For the Sacred Congregation of Councils, in the Decree *Senogallien.* concerning suspensions and irregularities, January 21, 1857, states: "The laws which prescribe warnings do not make any distinction between one and the other, that is to say, between the judicial and the extrajudicial method of proceeding, so that in every case, this prescription should be considered to have equal force." Furthermore, whatever may be the contrary opinion of some doctors, concerning the case in which a precept is issued threatening suspension to those who transgress, it remains firm and immutable that Chapter 26 of the *Decretales* concerning appeals states that prelates must not pronounce a sentence of suspension or excommunication against subjects, unless a canonical warning has preceded, except in the case of a fault which, by its very nature, incurs the penalty of suspension or excommunication, etc. If this penalty is to be considered valid, it must be considered unjust, unless a serious cause is present. The reasons for which the parish priest was opposed by other administrators, who were attempting to usurp his rights, as he himself demonstrated by appealing, were not so serious as to warrant the imposition of suspension. As for the removal, it must be stated that the parish priest protested that he had never promised to relinquish the parish, which he had administered since 1862. Given this, the parish priest, by virtue of his immovable office, cannot be removed from the parish unless he is convicted of a crime for which removal is established by law, according to Council of Trent, Session 21, chapter 6, and chapter 14, concerning reforms. Indeed, such a coercive removal is a very serious penalty, by which a cleric cannot be punished, except after a crime equally serious, of which, after warnings and a formal and solemn process, and a just judgment of the judge, he has been convicted, as noted by Reiffenst. in book i on renunciations, after the Council of Trent, in Session 24, chapter 4,

Translated by churchlatin.ai, a product of Boyne Archives

and Session 11, chapter 6, concerning reforms.

[*Latin ed. p. 150*]

150. The practice of suspending and removing a priest from a parish is a salutary provision, and the Sacred Congregation of Councils has consistently adhered to this principle. Whenever the guilt of a parish priest has been clearly proven, or when, without observing the form prescribed by the Holy Canons, he has not been favorably disposed towards the parishioners, the Congregation has invariably responded with the deprivation of the parish, as in Camerino, May 8, 1784; in San Severino, April 4, 1778; in Krakow, February 16, 1770; and in Piacenza, in the case of Reintegratio in integrum. In one instance, no process was held; for the Bishop himself declared that unless that priest was removed, the matter could not be resolved. Accusations against a parish priest could be refuted by the testimony of three other priests; who testified that he was the victim of calumnies, due to political conditions against which he had dared to fight. Even if the priest were not to be deprived of his benefice, but only temporarily removed, his reputation should always be considered. For if the Ordinary can exercise his authority, the priest has a right to his good name. Therefore, all canonists reject removal that is not based on a just cause. Consequently, Cardinal de Luca, in Disputationes, 97, n. 1, limits the power of removal. The first of these limitations is when the removal is motivated by hatred or calumny. Secondly, it is limited when the removal would cause disgrace, or infamy, or some other prejudice, according to decision 6, concerning restitution and deprivation. From these considerations, it follows that there must be a reasonable cause, but one dependent on the facts imputed. Therefore, irrational animosity should not be considered, when the parish priest has not been tainted by any crime, but has only shown zeal for religion. Then, the hatred of the people, although it may be voluntarily expressed, is certainly not a necessary reason to deprive the pastor of his benefice, as is stated in chapter Nisi io de renunciat. From these principles, it follows that a parish priest who is innocent of any crime cannot be compelled to renounce his benefice. It is important to remember that in one instance, the case involved a simple medicinal censure (which the parish priest could have avoided by obeying the Bishop and moderating his actions), and no warnings were required.

[*Latin ed. p. 151*]

Suspension and removal from the parish: Certain sentences. Thus, the Sacred Congregation [for the Propagation of the Faith] in Suessana, concerning the restoration and amendment of damages, of July 8, 1854, §: "It is wrongly argued that the adversary is aggrieved by the lack of warning and the sentence, as if this were a matter of a penalty properly so called, and not rather of censure. And clearly, this suspension is not intended to

Translated by churchlatin.ai, a product of Boyne Archives

punish a crime, but to correct the obstinate [person], and it is for a time indefinite, not as a punishment, but as a censure," Suarez, *De censur.*, Disp. 25, cap. i, n. 2. No one denies that bishops possess the faculty of suspending [someone] from divine duties; this suspension is maintained whenever it has been proven that there was a lack of deference and respect towards the Superior, and that there was a reasonable cause, even if not so grave; Benedict XIV, *De Synod. Dioeces.*, lib. io, cap. 5, *Devoti Instit.*, canonicae. No suspension is to be imposed without a reason, although it does not require a fault as grave as that which would warrant excommunication or interdict. The series of events demonstrates that the bishop was not moved by hatred or anger, but by serious and repeated complaints, and by the counsel of another bishop. These complaints further urged the Ordinary to consider the salvation of souls, without the clamor of judgment, but through paternal guidance. Regarding the removal from the parish, it should be noted that the parish priest was accused of negligence towards the dying, to the extent that someone died without the comfort of the sacraments. It was also reported that he spoke ironically about matters pertaining to religion, as if he scorned such things. Therefore, indifference towards religion has progressed to such an extent that, in that parish, out of a thousand inhabitants, scarcely 10 children receive religious instruction. Furthermore, it should not be forgotten that, at times, many things are remitted from the strict judicial form, and are placed within the path of episcopal prudence, economically and administratively; as is indicated in Chapter 5, title iç, concerning the change of things. However, if he has examined the necessary cause, he can lawfully transfer persons from one place to another; so that those who are less useful in one place may be able to exercise themselves more usefully elsewhere. And therefore, canonists hold that the bishop can compel the parish priest to relinquish the benefice, insofar as the public good demands it, Reiffenst., ad cit., cap. n. 38.

[*Latin ed. p. 152*]

Suspension and removal from a parish: The Bishop can also compel a cleric to exchange his benefice with another, if a grave reason demands it, or because he is less suitable for performing the duties of the benefice. Schmalzgrueber, cited, op. cit., maintains the same, if utility or necessity so suggests, for example, because he is less suitable for administering [the parish], or because he has caused scandal among the people. This principle holds, not only for obligatory exchange and renunciation, but also for removal and deprivation of the benefice after the Council of Trent, Session 24, chapter 1, concerning reforms, when Bishops act as Apostolic Delegates, based on informed conscience, or even according to chapter 6, Session 21, concerning reforms: "Because uneducated and inexperienced rectors of parochial churches are less suited for sacred offices..." And under this designation of the uneducated, canonists understand not only those

Translated by churchlatin.ai, a product of Boyne Archives

who lack speculative knowledge, but also those who lack practical knowledge, or, as the Council of Trent says, those who are less suited for sacred offices, and those who are unable to explore those things that pertain to the duties and burdens of the benefice they hold, and according to the dignity, status, and office to which they are appointed. However, when the spiritual and public good are at stake, it seems less important to consider unjust grievances or just complaints; or whether the grievance is voluntary or necessary; with the parish priest sending a messenger. For, according to Canon 35 of the Council of Trent, the utility of the many should be preferred to the utility of one, and the precepts of the law should be relaxed for the sake of peace. Regarding the matter, Reififenstuel. If a grave aversion and hatred arises among the people against the parish priest, so that his words produce no further effect, and the people despise the divine [authority] or scandal arises, then... The Sacred Congregation has confirmed this on several occasions, especially in the case of the exchange of the parish of Limburg en, on January 27 and December 19, 1857, and in the case of the exchange of the parish of Eystetten, on September 25, 1742. The Sacred Congregation of the Holy Office has responded repeatedly and with deliberation; and the intention was that nothing should be left undone to induce the parish priest to voluntarily renounce the parish: but everything was rendered futile. Therefore, the formally proposed measures must be resolved.

[*Latin ed. p. 153*]

Suspension and Removal from a Parish: 153 Doubts.

I. Whether and how a suspension from Divine duties can be imposed in case f.

II. Whether and how the Parish Priest C. should be removed from the parish of S. in the aforementioned case?

III. Whether and how the expenses and damages should be compensated to the aforementioned Parish Priest in the case f.

RESOLUTION. The Sacred Congregation, having carefully considered all matters, on April 12, 1878, decided to respond as follows: Regarding points 1, 2, and 3, it is the opinion that the Bishop should suspend the Parish Priest C. from the exercise of his pastoral duties, assigning him a pension of 400 livres annually from the income of the benefice itself, and that he should appoint an economist and curate, to be nominated by the same Bishop, who, in addition to the remaining parochial revenues, shall provide compensation, according to the means indicated by him in letters sent to the Sacred Congregation on February 3, 1878. The pension granted to Parish Priest C. shall be maintained for him as long as he does not cause trouble to the Bishop and the economist, and furthermore.

Translated by churchlatin.ai, a product of Boyne Archives

FROM WHICH WE MAY GATHER:

I. That, according to the Council of Trent, all parish priests who are not suitable for the sacred duties can be removed from office, or suspended from their duties; that is, all who are incapable of fulfilling the tasks incumbent upon them in the exercise of the benefice they hold.

II. And therefore, not only those lacking in speculative knowledge, but also those lacking in practical knowledge, should be removed; such as those who do not know how to fulfill the duties attached to their dignity, status, and office, and who, consequently, suffer detriment to the spiritual good.

III. After the Council of Trent, Session 21, chapter 6, Bishops, even acting as Apostolic Delegates, can remove anyone from a parish in any way deemed unfit, when the utility or necessity of the Church requires it.

IV. The removal of parish priests who cause scandal among the people appears to be strongly demanded by the utility and necessity of the Church.

[*Latin ed. p. 154*]

The suspension and removal from the parish caused this; so that his words produce no further fruit, and the people despise the divine things. V. For, since the spiritual good of the people must be considered above all else, and since the benefit of many must be preferred to the benefit of one, there is no doubt that a pastor who causes scandal and is hated by the people can be removed, lest temporal honor seem to be placed before eternal salvation. 1 VI. The pastor had proven to be lacking in the practical knowledge necessary to fulfill the duties of his office; but he multiplied scandals and divisions to such an extent that the people, having been entrusted to him, utterly despised and detested him. VII. In judicial sentences, three admonitions are required, or at least one, which shall stand in place of the three, so that censure may be imposed as a punishment for the crime; but no admonition is required when a simple medicinal censure is imposed on someone, not to punish the crime, but for the correction of the fault. *From the Sacred Congregation of Indulgences, concerning additions and accumulations of indulgences.* The Roman Pontiffs have always been accustomed to observe moderation in granting indulgences, lest the keys of the Church be profaned and the satisfaction of penance weakened, chapter 14 concerning penance and remission. And guided by the same principle, they have never failed to restrain within those limits the indulgences which they have perceived to have exceeded the bounds of moderation. Likewise, the Holy Tridentine Council DECREED. 1 The Apostle says: "Wherefore, if meat scandalize my brother, I will never eat flesh, lest I should scandalize my brother."

[*Latin ed. p. 155*]

In the 155th session, 23rd decree, concerning indulgences, and adher-

Translated by churchlatin.ai, a product of Boyne Archives

ing to the ancient and approved custom of the Church, it earnestly urges moderation in the granting of indulgences, lest ecclesiastical discipline be weakened by excessive leniency. Furthermore, desiring to correct and remedy the abuses that have arisen concerning indulgences, it commands the Bishops to diligently collect from their churches all such abuses, and to bring them before the Supreme Roman Pontiff, whose authority and prudence will determine what is best for the universal Church. This authority is customarily exercised by the Roman Pontiffs through the Sacred Congregation for Indulgences, after its institution.

Therefore, various abuses, which have been discovered to have harmed the salutary discipline of the Church in certain regions, were presented at a general congregation held in the Apostolic Palace at the Vatican on December 14, 1877, in the form of the following questions:

1. Can a Bishop, or any other Prelate, add other indulgences to the same act of piety, or to the same pious association, to which indulgences, whether plenary or partial, have already been granted by the Roman Pontiff? Can new indulgences be attached to crosses, crowns, or sacred images that have been blessed by the Pope or by a priest with legitimate authority?

2. Can a Bishop rightfully grant indulgences to the faithful of a diocese that are not his own, if the Ordinary of the place consents?

However, in granting these [indulgences], moderation should be observed, according to the ancient and approved custom of the Church, lest ecclesiastical discipline be weakened by excessive leniency.

The Council of Trent, in Session 25, Decree on Indulgences, speaking of the abuses concerning indulgences, continues: "But concerning those abuses which have arisen with regard to indulgences, the Holy Synod decrees..."

Furthermore, concerning those who, through superstition, ignorance, irreverence, or in some other way, have committed abuses, and which, because of the many places and provinces in which these occur, cannot be specifically prohibited, the Synod commands all Bishops to diligently collect such abuses from their churches, and to report them at the first provincial synod, so that, after the opinion of other Bishops has been heard, they may be promptly brought before the Supreme Pontiff.

Moreover, the Council of Trent, in Session 21, chapter 9, decrees that indulgences, or other spiritual benefits, by which the faithful should not be deprived, should henceforth be publicly proclaimed by the Ordinaries of the places, with the assistance of two members of the Chapter, at the proper times.

[*Latin ed. p. 156*]

156. It is to be determined whether such a practice is to be tolerated, if the sole intention is to multiply the number of days of Indulgences attached

Translated by churchlatin.ai, a product of Boyne Archives

to the same devotional act by having a greater number of Bishops grant Indulgences, thereby increasing the total number of days of Indulgences.

2. Can a Bishop apply new Indulgences to the same act of piety, or to the same matter, to which a predecessor has already attached Indulgences?

3. Can a Bishop, even in infidel lands, grant an Indulgence of forty days, as a diocesan Bishop would, even if he is merely an auxiliary Ordinary of some Diocese?

4. Can a Bishop exceed the limits of his own jurisdiction in order to increase Indulgences, dividing the same act of piety and, for example, granting forty days of Indulgences for each word of the Angelic Salutation?

5. Can an Apostolic Delegate, by virtue of the faculties received from the Supreme Pontiff for granting Indulgences, cooperate with one or another Bishop within the territory of his Delegation, so that the same object or the same act of piety is enriched with Indulgences?

6. Are Prelates, to whom, by apostolic privilege, the faculty has been granted to grant plenary Indulgences on certain solemn feasts throughout the year, obliged to use this faculty by performing the act as often as such a feast occurs, or can they, by a single grant, extend the same Indulgence to all feasts during a recurring period of years, or even perpetually?

The Holy Congregation has judged that the following answers should be given:

To the first: Negatively, unless new conditions for its fulfillment are prescribed.

To the second: Negatively, in both cases.

To the third: Negatively.

To the fourth: Negatively.

To the fifth: It is advisable to abstain.

To the sixth: Affirmative, regarding the first part. Negatively, regarding the second.

[*Latin ed. p. 157*]

The following was brought to the attention of the Most Holy Pope Pius IX in an audience held on January 12, 1878, by the undersigned Secretary of the Sacred Congregation. His Holiness approved the aforementioned responses and ordered them to be published. Given in Rome, from the Secretariat of the Sacred Congregation, on January 12, 1878. Alia. CARD. OREGLIA A S. STEPHANO, Prefect. A. PANICI, Secretary. These doubts were proposed and resolved as of May 8, 1874. Regarding the first part of the second doubt, the Sacred Congregation considered the opinion of the Consultor, which was as follows: It must be held with certainty that a Bishop cannot exercise any jurisdiction outside of his own Diocese, as his own proper jurisdiction. However, if a Bishop of another Diocese consents,

Translated by churchlatin.ai, a product of Boyne Archives

then it must be considered how that consent should be understood. OPINION OF THE CONSULTOR. A Bishop cannot consent to another Bishop exercising jurisdiction in a Diocese that is not his own, as if it were his own; for he does not have such jurisdiction, and it would be contrary to the good order of the hierarchy. However, if to consent is the same as to delegate, then I certainly say that a Bishop can exercise jurisdiction in another Diocese by delegation from the Ordinary, and can grant Indulgences. For example, if a Bishop, due to infirmity or another impediment, cannot consecrate the Church, nor ordain priests, nor confer the sacrament of Confirmation, nor perform other sacred functions, then he can certainly invite an Auxiliary Bishop, or the Ordinary of another Diocese, to perform those functions, and can delegate to him the faculty of publishing the appropriate and approved Indulgences. Therefore, in this case of delegation, the faithful of the Diocese that is not his own can be granted Indulgences within the limits of law, that is, up to 40 days. OBSERVATIONS FROM THE OFFICE. It was noted with Benedict XIV, *De Synod. Dioeces.*, book 1, chapter 18, section 2. « Peri-

[*Latin ed. p. 158*]

158. Some seem to believe that it is excessively diligent and troublesome to carefully examine and investigate whether certain abuses have been introduced concerning some place, or matter, or action, pertaining to pious Indulgences. However, it is necessary to expose the appropriate remedies so that they may not be imposed upon the Christian faithful; and this is hindered by the fear that, if the inconsistency of the Indulgences themselves is detected by them, which had previously remained hidden from them, and had not been announced to them by those who ought to have demonstrated the truth of the matter to them without deception, they will be disturbed, offended, and will seize the opportunity to ridicule those who manage the affairs of ecclesiastical government. Having explained the danger arising from the removal of abuses concerning Indulgences, the Pope suggests a remedy, proceeding as follows: "Indeed, it is not so difficult or arduous to find a way to escape this labyrinth, as some believe. If, in the discussion of Indulgences which the Bishop has instituted in his Diocese, he should discover some that seem doubtful to him in their faith, let him not fail to record them in a report concerning the state of his Church; and when he has done so, it will be necessary for the Congregation of this Council to refer the matter to another Congregation concerning Indulgences. If, after such an examination, it should happen that such Indulgences are declared apocryphal, let the Pope be asked to substitute true and canonical Indulgences for the apocryphal ones, and (as we hope) a decree consonant with this be obtained; not only will this remedy prevent all accumulated inconveniences in this way, but moreover, a true and spiritual opportunity for joy will be offered to the faithful people." A remedy of this kind was applied by Pope Benedict XIV on March 6, 1856, concerning the Indulgences

Translated by churchlatin.ai, a product of Boyne Archives

which were commonly said to have been granted to the Blessed Joan of Las Valeras. This having been presented to the Sacred Congregation by a Consultor in Mexico on March 30, 1856, the Sacred Congregation, after declaring the apocryphal Indulgences and privileges concerning which they were dealing, took care to have new ones granted by the Supreme Pontiff, as were granted under the date of April 14, 1856.

[*Latin ed. p. 159*]

Regarding the Indulgences to which this pertains, information was also presented concerning the practice observed among Spanish Bishops. Indeed, according to this practice, which they claim is very ancient, Bishops either grant Indulgences within their own Diocese, and Metropolitans within their province, or they grant Indulgences in their own Diocese for those who are not members of that Diocese, upon their request, or they grant Indulgences outside of their Diocese for those who are not members of that Diocese, also upon their request. In the first case, they grant them according to their own right, in the customary form of the Church. In the second case, they exercise their right regarding the granting [of the Indulgence], but regarding the earning [of the Indulgence], and the approval of the prescribed works, according to the will of their own Ordinary, with these words: "having first obtained the approval of the Ordinary for the earning and execution [of the Indulgence]." In the third case, with the double approval of their own Ordinary, with these words: "having obtained the approval of the Diocesan Prelate for the granting and earning [of the Indulgence]." As was reported, they requested that the Holy Congregation deign to judge the validity of the Indulgences granted or to be granted by those same Bishops, and to issue a decree according to such custom. However, there is no record in the acts of the Holy Congregation, either of the aforementioned consultation or of the response. With these other matters noted, the Holy Congregation provided responses to the seven proposed doubts regarding Indulgences, as has already been mentioned. From these, one may gather: I. That the Apostolic See is, in all respects, eager that the prescriptions of Trent regarding Holy Indulgences be fulfilled; from which it follows that the discipline of the Church should not be weakened by excessive ease in granting them. II. Therefore, it is not permissible that other Indulgences be added to the same works, or the same acts of piety, to which Indulgences have already been attached by pontifical or episcopal grant, or to other Indulgences already granted, either by the same Bishop or by different Ordinaries and Prelates. III. Bishops are not permitted to grant Indulgences except within their own Dioceses (although within the limits of their jurisdiction), because Trent...

[*Latin ed. p. 160*]

I. It has already been decided in Question 160 that Indulgences cannot

Translated by churchlatin.ai, a product of Boyne Archives

be granted by others, except by Bishops or the Ordinaries of the place.

II. Therefore, a Bishop in a suffragan diocese, although an auxiliary of some Ordinary, cannot grant Indulgences of forty days, because he is not the Ordinary of the place.

III. And it is a very grave duty for Bishops to diligently examine matters concerning Indulgences within their own jurisdiction, so that those which they find to be of doubtful faith may be recorded in relation to the status of their Diocese, lest the faithful people be deceived.

DECREE. FOR THE CITY AND THE WORLD. Concerning the custom of enrolling absent members in pious confraternities.

Since in some of the pious confraternities, especially those instituted in these times, the custom has arisen among the members of enrolling absent persons, which custom had long been condemned by this Sacred Congregation, which is concerned with Indulgences and Sacred Relics, particularly in the report made to the Most Holy Pope Leo XIII on April 28, 1761, by me, the undersigned Secretary of the aforementioned Sacred Congregation, during an audience held on April 13, 1878; the Most Holy Father, with prior absolution of all enrollments hitherto made improperly, ordered that in the future, the resolutions issued in the aforementioned year of 1761 be observed, and that they be recalled to observance, and ordered that these, together with the present decree, be made public.

Given at Rome, from the Secretariat of the same Sacred Congregation, on April 13, 1878.

A. L. Card. OREGLIAAS, Prefect.

STEPHANO,

L. JUS. A. Panici, Secretary.

[*Latin ed. p. 161*]

Decree 161, concerning the new Spanish kingdom of America. Most Reverend Benedict XIV, through his Apostolic Letters in the form of a Brief, dated at Rome, near Saint Mary Major, on the twenty-fifth day of May, in the year 1754, beginning with the words: "It is indeed...", confirmed all and each of the Indulgences and privileges perpetually granted to the Congregation, or Brotherhood, of the Most Blessed Virgin of Guadalupe, Patroness of the new Spanish kingdom in America, and granted other Indulgences through said Brief, with the faculty that these Brothers may also obtain them, even when absent and residing in any place. He also extended this privilege to Kings, Princes, and their relatives up to the second degree inclusive, allowing them to join the Brotherhood and to acquire all and each of the aforementioned Indulgences of the said Congregation, even when absent. Hence arose the doubt, whether the faithful who are absent can be admitted and enrolled in the Brotherhood? The reason for doubting seems to be primarily this, that the impediment of absence does not hold such

Translated by churchlatin.ai, a product of Boyne Archives

weight with the Supreme Pontiff, that it would exclude absent Brothers, and Kings and Princes, from obtaining Indulgences; therefore, those who are absent should not be rejected from the number of Brothers. However, since the Pontiff has declared that the defect of absence does not impede Brothers already enrolled, nor Kings and Princes, to whom a special faculty to be enrolled in the Brotherhood has been granted, it does not seem possible to admit the absent, who neither by the act of admission, nor by grace, can be called Brothers. It is added in the petition that, if the absent cannot be admitted into the Brotherhood, that the Most Reverend Fathers would deign to respond that they can be admitted, and at the very least, the inhabitants of the aforementioned new kingdom, to whom the patronage of the aforementioned Blessed Virgin extends, as has been granted with clemency to several similar Brotherhoods in Europe, and notably to the Brotherhood of the Most Holy Conception of Lecce. Acts, volume XI, page CXXIII.

[*Latin ed. p. 162*]

Decree 162. Therefore, the Most Reverend Fathers will declare: 1. Whether those absent may be admitted as members? And in this matter, negatively. 2. Whether one should petition the Holy Father for their admission, or at the very least, for the admission of the inhabitants of the aforementioned new Kingdom of Spain? The Sacred Congregation, on April 28, 1761, responded negatively in all respects. N. Cardinal L. 4 1 S. ANTONELLUS responded: Prefect J. De Comites, Secretary. FROM WHICH ONE MAY GATHER: I. That an unusual custom of admitting even those entirely absent to pious sodalities has been rejected by the Holy Father; therefore, unless they are present, they cannot properly enjoy the indulgences and privileges granted by the pontifical decree to such sodalities. II. However, the Most Holy Father, out of kindness, has validated all admissions made previously, while abolishing the custom, thereby restoring the aforementioned decree to force. For a better understanding of the matter concerning those absent, it is useful to note two things: 1. That after such a decree, no absent person can be properly admitted to any pious sodality, unless they first come to the place where the same sodality is established, and there personally request and obtain to be enrolled among the members. This cannot be accomplished by letter, nor by another person, and in no way would it be valid. 2. That generally, it is not permitted for members of any pious sodality to remain far from the place where the same sodality is established, so that they may profit from spiritual goods and be enriched by privileges. Often, in order to achieve this end, they are assigned to perform all, or a portion, of the prescribed works within the church of the same sodality. Members, after their admission has been personally made, may be absent from the place of the sodality, to the extent that only those works are assigned to them which

Translated by churchlatin.ai, a product of Boyne Archives

are called "compatible"; and those which can be performed anywhere; such as visiting the sick, providing alms to the poor, and similar things.

[*Latin ed. p. 163*]

Decree 163 of the Sacred Congregation of Indulgences; so that, by grace, even those who are absent may already be enrolled and may enjoy the graces and privileges with which the Sodality is endowed. III. Therefore, from the publication of this decree, it will be in vain to enroll any absent person among the members of any pious Sodality; for he will not be able to be enriched with the privileges, graces, or spiritual benefits of that same Sodality. FROM THE CONSISTORY ACTS OF THE SECRET CONSISTORY. HELD ON JULY 15, 1878. The Most Holy Father Leo XIII, desiring to provide for the needs of the Catholic Church, this morning, in the Vatican, proposed the following churches: The Suburbicarian Sees of OSTIA and ETVELITERNENSE, to be perpetually and canonically united; which were assigned to His Eminence Cardinal Camillus di Pietro, Dean of the Sacred College, transferred from Porto and S. Rufina. The Suburbicarian Sees of PORTO and S. RUFINA, to be perpetually and canonically united; which were assigned to His Eminence Cardinal Charles Sacconi, transferred from Praeneste. The Suburbicarian Church of PRAENESTE; which was assigned to His Eminence Cardinal Antoninus de Luca, with the relinquishment of the title of SS. Quatuor Coronatorum. The office of Vice-Chancellor of the Holy Roman Church and of the Supreme Letters Apostolic was conferred upon His Eminence Cardinal Antoninus de Luca, to whom the Church of S. Lawrence in Damaso was assigned in commendam.

[*Latin ed. p. 164*]

164 From the Acts of the Consistory, the CATHEDRAL CHURCH of D in Montevideo, newly erected, for the Reverend Father Hyacinth Vera, transferred from Megara in the land of the infidels, to the EPISCOPAL CHURCH of Semense. For the Reverend Father Nicholas de Martino, Bishop, reported from Venusia. The PATRIARCHAL CHURCH of Constantinople, vacant in the lands of the infidels, was assigned by the title of Saint Lawrence in Panisperna to the Most Reverend and Most Illustrious Lord Roger Aloysius Emidio, Servant of the Most Holy Roman Church, Cardinal of the Ancient Order of Prelates; to this aforementioned Church, the Most Holy Father elevated the Reverend Father James Gregory, from the Gallic company, born of legitimate Catholic and noble parents from Osimo, and having surpassed his seventy-first year. Formerly holding the position in the Patriarchal Archbasilica of the Lateran, and now having obtained a canonry in the Vatican Basilica, and having been added among the Domestic Prelates and Greater Presidents of His Holiness, Prefect of the Commission for the distribution of subsidies, Secretary of the Congregation of Indulgences, and one of those chosen for the revision of reports from the Churches

Translated by churchlatin.ai, a product of Boyne Archives

in the Congregation of the Council. He has performed the duties of the Sacred Consulta, and the Signatura Votantis, and is presently Servant of the Most Holy Roman Church, Vice-Camerarius. Constantinople, formerly Byzantium, rebuilt by Constantine the Great, and established as the seat of the empire, was the capital of the province of Thrace, which the Greeks call Romania. Subsequently captured by the Turks, and made their seat, it still languishes miserably under the yoke of the infidels; therefore, its deplorable state is passed over in silence. The METROPOLITAN CHURCH of Rhedones was vacant, following the death of the illustrious Father Godfrey, the last Archbishop of that see, who died while serving as a Cardinal of the Most Holy Roman Church, Brossais Saint Marc; the Most Holy Father transferred to the aforementioned Church the Reverend Father Charles Philip Place, whose qualities have been approved by the Apostolic See, since in the month of June 1866 he was Prefect of the Church of Marseilles. The city of Rhedones and the capital of Elia and Vicenonia, is located in the plain at the confluence of the Elia and Vicenonia rivers, and enjoys a healthy climate, and contains approximately forty thousand inhabitants, under temporary Gallic dominion. The Metropolitan Church is sufficiently large and fitting, and boasts the title of Saint Peter the Apostle, and is assisted by three bishops. Its Chapter consists of nine titular Canons, along with a theologian and a penitentiary, to which are added more priests and clerics, and on solemn days, students of the seminary for divine service.

[*Latin ed. p. 165*]

From the Consistorial Acts, the care of 165 souls is exercised in the Metropolitan Archdiocese. Furthermore, seven parish churches, equipped with baptismal fonts, are found in the city of Rennes; there are also several religious houses for men and women, a few lay sodalities, a hospital, a major seminary, and a minor seminary; however, a house of piety is lacking. The territory of the Archdiocese encompasses the province of Elijah and Vicenza, and contains six hundred thousand inhabitants.

The ARCHIEPISCOPAL CHURCH of Sirace is vacant, having been left vacant by the death of the Most Reverend Edward Hurmuz, the last Archbishop, who died outside the Roman Curia; the Holy Father has appointed the Reverend Father Dominic Roch Cocchia to that same Church, whose qualities have been approved by the Apostolic See; he had previously been the Prefect of the Church of Oropi since July 1874. Sirace is a city in the larger region of Armenia, located in the province of the same name, and is still miserably held by the infidels; therefore, its condition cannot be adequately described.

The ARCHIEPISCOPAL CHURCH of Hadrianopolis is vacant, having been left vacant by the death of the Most Reverend Emmanuel Joachim da Silva, the last Archbishop, who died outside the Roman Curia; the Holy Father has appointed the Reverend Father John Baptist Paolucci as Apostolic

Translated by churchlatin.ai, a product of Boyne Archives

Administrator of the Cathedral Church and the Diocese of Perugia, which the aforementioned Holiness retains, both in spiritual and temporal matters, for the good pleasure of the Holiness himself and the Apostolic See; his qualities have been approved by the Apostolic See, having previously been the Prefect of the Churches of Sutri and Nepes, which are perpetually united, since January 1876. Hadrianopolis is a large city in Thrace, divided by the Hebrus River, formerly the capital of the Turks before Constantinople was captured, and the seat of the kingdom; it still groans miserably under the yoke of the infidels; therefore, its condition cannot be adequately described.

The METROPOLITAN CHURCH of Naples is vacant, having been left vacant by the death of the Most Reverend Xystus, while he lived, the last Archbishop, who was a Cardinal Priest of the Riario Sforza family, who died outside the Roman Curia; the Holy Father has promoted the Reverend Father William Sanfelice to the aforementioned Metropolitan Church; he is a native of Aversa, born of legitimate, Catholic, and noble parents from Aquaeveliae, and is in his fifth decade of life. He was attached to the Congregation of Monte Cassino from his youth, and was assigned to the monastery of the Most Holy Trinity in Cava; he was then assigned to the Neapolitan clergy, and subsequently, within the Order of Saint Benedict, he took solemn vows in the Congregation of Monte Cassino of the Most Holy Trinity in Cava, and there he received the order of the priesthood; he also received a doctorate in sacred theology and canon law, the foundations of which he published in print. He is the Dean of Monte Cassino, and Abbot of the exempt Abbey of the Most Holy Trinity in Cava.

[*Latin ed. p. 166*]

166 From the Consistorial Acts, a pre-synodal warning, and the General Vicar in spiritual matters, has resigned. Naples, the largest city in Italy, a most famous port, the most populous of all Italy, the capital of the Neapolitan region and the primary city of the province of Terra Laboris, built partly on the plain and partly on a hill along the southern coast of the Mediterranean Sea, has a circumference of approximately seven miles, and with its suburbs, it contains over five hundred thousand citizens. The Metropolitan Church, sufficiently large, of ancient structure, boasts the title of the Blessed Virgin Mary, assumed into Heaven, and requires no major repairs; four bishops assist her. Her chapter includes thirty canons, divided into four orders, with a theologian and a penitentiary; twenty-two hebdomadaries; eighteen beneficed individuals, and other priests and clerics devoted to the service of the divine. The care of souls in the Metropolitan Church itself is exercised by a perpetually elected and by the Archbishop approved vicarious. Furthermore, numerous parish churches are found in Naples, all equipped with baptismal fonts; one of these, under the title of St. John the Baptist, is also a collegiate church; there are also several monasteries for

Translated by churchlatin.ai, a product of Boyne Archives

men and women, numerous lay sodalities, not a few hospitals and conservatories, a pawnbroker's, and two seminaries.

The METROPOLITAN CHURCH of Munich and Freising is vacant, due to the death of the Most Reverend Gregory Scherr, the last Archbishop, who died outside the Roman Curia; the Most Holy [See] has, with the force of an Apostolic Indult, nominated the Reverend Anthony Steichele to the aforementioned Church. He was born in the village of Mertingen, in the Augustinian diocese, near Donauwörth, from legitimate, Catholic, and honorable parents, and has surpassed his sixty-second year. Having devoted his mind to philological studies and bringing the history of the Augustinian diocese to light, he had previously resigned from the position of vicarious of that diocesan cathedral, and then as canon, and finally as prelate.

Munich, or more properly, Munich, is the capital of the entire Kingdom of Bavaria, and the seat of its kings, located on a plain on the left bank of the Isar River, sufficiently large and distinguished by its monuments; it contains approximately ten thousand houses, together with its suburbs, and is inhabited by nearly two hundred thousand Catholic inhabitants, and by approximately seven thousand non-Catholic inhabitants, under the temporary dominion of the aforementioned Most Serene King. The Metropolitan Church, of great size and Gothic style, boasts the title of the Blessed Virgin Mary. Her chapter includes two dignitaries, of whom the first, after the pontifical, is the office of Prelate; ten canons, with a theologian and a penitentiary; six vicars; and four assistants.

[*Latin ed. p. 167*]

From the Consistorial Acts, there are two concensors, sixteen beneficed clergy, to whom other priests and clerics are added for the divine service. The Chapter has charge of the care of souls. Furthermore, there are nine parishes in the city of Munich and its suburban areas, adorned with baptismal fonts, the Collegiate Church in the Temple of Saint Cajetan, the Abbey of Saint Benedict near Saint Boniface, three monasteries of men and two monasteries of women, two religious houses, several lay sodalities, a hospital, and four hostels, three pawnbrokers' establishments, and the Georgian College, and in Scheyern and Freising, a triple seminary with students. The Cathedral Churches of Aquinate, Pontis Curvi, and Sora are perpetually and canonically united with each other. Due to infirmity and failing eyesight, the Most Reverend Doctor Paul of Niquesa, Bishop of those Churches, requires the assistance of another to perform pastoral duties in those cities and dioceses. Therefore, the Most Holy Father has appointed as Coadjutor with succession, the Most Reverend Doctor Ignatius Persico of Naples, of the Order of the Friars Minor Capuchin of Saint Francis, whose qualities have been approved by the Apostolic See, having previously been in charge of various churches in parts among the

Translated by churchlatin.ai, a product of Boyne Archives

infidels. Aquinum, Fregellae, and Sora are cities of Latium, located in the Terra Laboris near Liris. The first, Aquinum, contains approximately one thousand inhabitants. Fregellae, or Pontis Curvi, contains one thousand five hundred houses, in which live nearly three thousand citizens. Sora, located in the plain, counts three thousand houses, and includes approximately six thousand inhabitants. The Cathedral Church of Acquapendente: The Most Holy Father transferred to the aforementioned Church the Reverend Father Ubertino Focaccetti, Apostolic Administrator, who, after the recent death of John Baptist Pellei, also assumes the title of that Church. Acquapendente, also called Acula, is a city of the Patrimony of Saint Peter, located near the river Palea, built partly on the plain and partly on the mountain, and within its approximately three-mile circumference, it contains eight hundred houses and nearly four thousand inhabitants. The Cathedral Church boasts the title of the Holy Sepulchre of Our Lord Jesus Christ, and is immediately subject to the Apostolic See. Its Chapter includes two dignities, the first of which, after the pontifical one, is the Archdeaconate, twelve Canons with a theologian and a penitentiary, four Chaplains, as many Beneficiaries, and other priests and clerics serving the divine ministry. The Cathedral Church of Barcelona: Vacant due to the translation of the Most Reverend Doctor Joachim Lluch and Garriga to the Metropolitan See of Hispalis; the Most Holy Father transferred to the same Church the Reverend Father Joseph Mary de...

[*Latin ed. p. 168*]

From the Acts of the 168 Consistorial Meetings, Urquinaona and Bidot, whose qualities were approved by the Apostolic See, were appointed to the Canadian Church in June 1868. Barcelona, a city and the capital of the homonymous province in Catalonia, situated in a fertile location near the Mediterranean, flourishes with frequent commerce and is inhabited by over three hundred thousand people, being under the temporary dominion of the aforementioned Most Serene King of the Catholics. Its Chapter, by Apostolic Letters given on the ninth of September 1851, numbers five dignitaries, after the pontifical, the first being the Dean, and then four Canons, in addition to a theologian and a penitentiary by office, twelve honorary Canons, sixteen beneficed priests, and other priests serving in the divine ministry. The CATHEDRAL CHURCH of Massilia, vacant, was transferred by the Most Reverend Father Charles-Philippe Place to the Metropolitan See of Rhedone; the Most Reverend then appointed the Reverend Father John Louis Robert to the aforementioned church, whose qualities were approved by the Apostolic See, who was appointed to the Constantinian Church in May 1872. Massilia is a city and the capital of the province of the Mouths of the Rhone, built partly on a mountain and partly on a plain, on the coast of the Mediterranean, and enjoys the best air, and is inhabited by over three hundred and fifty

Translated by churchlatin.ai, a product of Boyne Archives

thousand people, under temporary French dominion. The old Cathedral Church, under the invocation of Saint Mary Major, which is now destroyed, has been replaced by a new one, which is magnificently built under the title of Saint Lazarus. The CATHEDRAL CHURCH of Monti Falisci, vacant, was transferred by the Most Reverend Father Concept Focaccetti to the See of Aquapendente; the Most Reverend then appointed the Reverend Father Aloysius Roteili to the aforementioned church, born of legitimate, Catholic, and honest parents in the territory of Curtiano in the Diocese of Perusina, and who, in the forty-fifth year of his age, was appointed. At the Patriarchal Seminary College, he was chosen as a Professor of eloquence, Italian, Greek, and Latin literature, logic, metaphysics, ethics, and natural law, and has now renounced his position as Professor of dogmatic theology. Among his colleagues in the Theological College and as an Examiner for the Synod of his own diocese, he is also counted among the Domestic Prelates of His Holiness. He has also attained the Archdiaconate of Perusina. The city of Monti Physcon, belonging to the Patrimony of Saint Peter, is built on a mountain, and encompasses almost a mile, including a thousand houses and six thousand inhabitants. The Cathedral Church of Saint Margaret V. and M. boasts this title, and is immediately subject to the Apostolic See.

1. The remaining propositions of the same day will be given in the following fascicle.

[*Latin ed. p. 169*]

Instruction 169. INSTRUCTION from Cardinal Raphael Monaco, of Vaux, General Vicar of His Holiness Pope Leo XIII, to the parish priests of Rome. His Holiness, Pope Leo XIII, the supreme pastor of the entire Church, and in a special manner of this his beloved Roman Church, which, according to divine disposition, holds the primacy of ordinary authority over all the churches of the universe, and is the mother and teacher of all the faithful (Council of Lyons II and Vatican), deeply laments the persecutions which the holy Church of Jesus Christ suffers everywhere. Moreover, he is greatly distressed by the efforts being made here in Rome to steal from the hearts of the Romans the precious treasure of the faith. One of the things that greatly grieves the paternal heart of the Holy Father, as can be seen from the Letter (Version).

INSTRUCTION. Em. Card. Raphael Monaco, of Vaux, General Vicar of His Holiness Pope Leo XIII, to the parish priests of Rome. Most Holy Father, Leo XIII, Supreme Pastor of the entire Church, especially of this your beloved Roman Church, which, according to divine disposition, holds the primacy of ordinary power over all the churches of the world, and is the mother and teacher of all the faithful (Council of Lyons II and Vatican), as he grieves from the heart for the persecutions which the holy Church of Jesus Christ has suffered of late everywhere on earth, so he is greatly

Translated by churchlatin.ai, a product of Boyne Archives

saddened by the efforts being made in Rome to deprive the hearts of the Romans of the most precious treasure of the faith. Among other things, the most beloved heart of the Holy Father is...

[*Latin ed. p. 170*]

170 The instruction which He deigned to send me on June 26th, concerns the swiftness with which heretics of various sects have come to settle here in Rome, and are establishing schools of heresy, in order to pervert this people, and especially to ensnare the heedless youth, who are easily swayed to error as to vice. Sadly, what is happening now is what the martyr Cyprian wrote to the Holy Pope Cornelius: such is the audacity of the heretics, that they dare to sail to the Chair of Peter and to the principal Church, from which the unity of the priesthood derives its origin. But on the other hand, there is every reason to hope that what the holy martyr immediately added will come to pass, namely, that the heretics forget that they are dealing with Romans, whose faith was proclaimed throughout the world by the Apostle Paul (Rom. I, 8), so that perfidy finds no access among them (Cyr. ep. ad Corn., ed. Baluz., p. 86). Indeed, great efforts are being made in Rome, since it was taken from the temporal governance of the Holy See; as can be seen, from the letters which He deigned to send me on June 26th, the audacity with which heretics, from various sects, establishing their own dwelling in Rome, teach heresy, in order to pervert this people, and to lay snares for the heedless youth, who are easily led into error and vice. It undoubtedly happens now, that what the martyr Cyprian wrote to the Holy Pope Cornelius, is such the audacity of the heretics, that they have not been ashamed to approach the Chair of Peter, and to the principal Church, from which their own priestly unity derives its origin. Moreover, it is certainly to be hoped that what the holy martyr immediately added will come to pass, namely, that the heretics forget the matter of dealing with the Romans, whose faith the Apostle Paul proclaimed to all nations (Rom. I, 8), so that perfidy lacks access among them (Cyr. ep. ad Corn., ed. Baluz., p. 86). Indeed, they strive greatly in Rome, since the City was taken from the temporal governance of the Holy See, heretics and sectarians.

[*Latin ed. p. 171*]

Instruction 171: The heretics and sectarians receive a great quantity of gold from overseas lands. In addition to several temples and halls of conferences which they erected in the most populated streets, almost as an insult, there have been opened no less than ten schools for boys and girls, as well as some colleges and orphanages directed by Protestants, with the very clear intention of spreading the poison of their errors along with bread and material assistance, of which they are generous to their listeners and students, abusing the ever-increasing misery among this population. But to the glory of God, and to the honor of the faithful of Rome, I have the consolation

Translated by churchlatin.ai, a product of Boyne Archives

of being able to publicly confess, with St. Cyprian, just mentioned, that although these heretical efforts are great and exceedingly seductive, they achieve very little in their wicked intention: their conquests are meager, and among the Romans, much less than among those who have come to Rome in recent years. Nevertheless, both Romans and all those who come from all parts to Rome are in danger of losing the faith, a precious gift.

[*Latin ed. p. 172*]

Instruction 172: The foundation of all heavenly goods is, if one is not forewarned against the frauds and deceptions of heretics. It is truly deplorable that the Romans must be forewarned against heresy, which is protected and favored in their city, the head and center of the Church of Jesus Christ. But since we are compelled to see this holy city subjected to profanation, and heresy raise its head before the very Master of the infallible Faith; and the Roman people are incited to rebellion against the Roman Church, of which it makes the greatest boast; I have considered it a duty of my office to remind all that apostates, heretics, and schismatics of any sect, and whatever name they may be called by, incur the greater excommunication, specially reserved to the Supreme Pontiff; and I have deemed it necessary to establish certain norms, by which, with the help of the parish priests and confessors, the faithful may be instructed in their duties against the insidious traps of the heretics, laden with flatteries.

In Constitutione Apostolicae Sedis, Cap. I.

[*Latin ed. p. 173*]

Instruction 173. These norms have been subjected, as is fitting, to the supreme judgment of the Holy Father, who, having heard the opinion of a Congregation of Cardinals, my colleagues, has ratified them in the following terms:

1. Those who, even without the intention of adhering to heresy, and solely out of human respect, give their names to the sects of heretics of any denomination, incur the greater excommunication reserved to the Pope among the most special.

2. All the more do those incur the same penalty who participate in un-Catholic functions or services, as is commonly said, or who listen to a preacher with the intention of surrendering themselves to him, to the extent that, as they impiously say, they may be persuaded by him.

These norms, as was fitting, were subjected to the supreme judgment of the Most Holy Father, who, having heard the counsel of a Congregation of Cardinals, my colleagues, ratified them with the following words:

1. Those incur excommunication, reserved to the Pope among the most special, all those who, even without the will to adhere to heresy, and solely for the sake of human respect, give their names to the sects of heretics, of any denomination whatsoever.

Translated by churchlatin.ai, a product of Boyne Archives

2. Furthermore, those incur the same penalty who participate in un-Catholic functions or services, as is commonly said, or who listen to a preacher with the intention of surrendering themselves to him, to the extent that, as they impiously say, they may be persuaded by him.

1 2 1 This is a certain extension of the excommunication mentioned in the preceding chapter, to which they deserve to be subjected, both because they cause shame to the faith, and act contrary to the precept of Christ, who says in Luke 9:26, "He who denies me before men, him will the Son of man also deny when he comes." Furthermore, because they expose themselves to the danger of losing the faith; because they are a scandal to the faithful; and finally, because, even though they may be Catholics internally, they are regarded by the faithful as true heretics; for man sees what appears, but God beholds the heart (1 Kings 16:7). These are the first to be condemned. For they give their names to the sects of heretics, without the intention of adhering to heresy, and therefore are clearly Catholics internally, for the sake of human respect. But those who participate in un-Catholic functions or services...

[*Latin ed. p. 174*]

174 Instruction 3. Likewise, those incur the same excommunication who, having become authors of another's spiritual ruin, in any way induce, and cause others to go to or come to the halls and temples of heretics, to hear the lectures. 4. And finally, all those are also subject to the same penalty who, through the printing press, publish invitations to the aforementioned lectures, and the topics of the same, because of the favor which, with such an action, they give to the propagation or confirmation of heresy. It is strictly forbidden to enter, merely out of curiosity and knowingly, into the halls and temples of Protestants, at the time of the lectures; and to offer, with services, or other means, with the intention of embracing heresy, if it should be suggested to them, even if they already have doubts about the faith and have somewhat withdrawn from it. For doubt cannot consist with faith. Moreover, they expose themselves to evident danger of abjuring the true faith; for since they are usually lacking in suitable knowledge, how will they be able to detect and refute the sophistries of heretics, false arguments, corrupt interpretations of Holy Scripture and the testimonies of the Fathers, perverted documents taken from history, especially ecclesiastical history, and other deceptions? And rightly so. These are usually to be considered as true heretics, unless they would not induce others to attend the lectures of heretics. I said "usually"; for they may perform this task for the sake of base gain, or for some other reason, without actually adhering to heresy in their heart. Nevertheless, they do not escape excommunication from this. In Chapter 1 of the Apostolic Constitution, the supporters of heretics are excommunicated. There is no doubt whatsoever that printers render such a favor to heretics by publishing such invitations, whatever the reason may

Translated by churchlatin.ai, a product of Boyne Archives

be for doing so.

[*Latin ed. p. 175*]

Instruction. It is gravely sinful for all those who, out of mere curiosity, listen to the lectures of Protestants, and who, even materially, attend non-Catholic ceremonies; and for all artists who, even solely for the sake of profit, go to sing and play in Protestant places of worship; and for printers, even those in subordinate positions, who, in order not to be dismissed by their superiors, set the type for the printing of books by heretics; and this all the more so if these are books of heretics in which heresy is taught and defended, so that even subordinate printers incur the greater excommunication, which is especially reserved for the Pope.

Indeed, all those who, out of mere curiosity, listen to the lectures of Protestants, and who, even materially, attend non-Catholic ceremonies, gravely sin, because they expose themselves to the danger of losing their faith, and because they cause scandal. And for the same reasons, all artists who, even solely for the sake of profit, go to sing and play in Protestant places of worship, gravely sin.

Furthermore, these are the reasons why the temples of the Protestants are more easily and numerously frequented by the faithful.

Therefore, if these subordinate ministers, commonly called compositors, set the type for the printing of books by heretics which neither teach nor defend heresy, they certainly sin gravely, but do not incur excommunication; otherwise, if the books printed teach and defend heresy.

However, I would excuse such compositors from this kind of excommunication, and even from sin, if they understand nothing of the book they are setting in type, and if they know nothing about it from their superiors; nor do they know whether the book is Catholic or heretic, written by Catholics or heretics. For knowledge is required to incur sin and excommunication. Such compositors are usually completely ignorant, lacking any knowledge of the subject matter of the book they are setting, and for this reason, the pages are distributed to them for setting in this way and that. Moreover, they do not pay any attention to the subject matter of the book.

However, if it happens that they notice heresy in the book they are setting, in order to avoid excommunication, they must immediately and without delay...

[*Latin ed. p. 176*]

Instruction 176: Architects, contractors, and master builders are not absolved from mortal sin if they provide their services and work on the construction and ornamentation of a Protestant temple. However, masons and other subordinate workers may be excused from sin, provided that there is no scandal in their actions, and the work is not done in contempt of the Catholic religion. But it is the duty of pastors and confessors to instruct

Translated by churchlatin.ai, a product of Boyne Archives

this poor people that even from mortal sins, architects, contractors, and master builders are not absolved, who contribute their own work, and labor to erect some temple of the Protestants. As for the builders and other subordinate workers, they may be excused from sin, provided that there is no scandal in their actions, and the work is not done in contempt of the Catholic religion. But it is the duty of pastors and confessors to diligently strive to instruct this kind of people, that it is necessary to abstain from such material work, lest they abandon the work of salvation. But what about those who are commonly called correctors? For these do not collect types, but only correct printed impressions, in Italian, "li stamponi"?

Answer: The Holy Father Leo XIII excommunicated printers, and even their secondary assistants. Correctors, however, are counted among the principal assistants. Therefore, they are also subject to excommunication, because they come under the name of printers, and by "printers" are not meant only printers and printing shops, but all those who have a position in the printing trade. For they knowingly and willingly, and without any necessity, contribute their services to the erection of Protestant temples. Indeed, it often happens that there is no scandal, since everyone knows that these workers contribute their services out of poverty and misery, and that they toil in building these temples, because they cannot find work elsewhere. However, pastors and confessors must diligently observe the warnings given by our Holy Father Leo XIII on this matter. For he sets forth criteria by which it can be determined when a work is done in contempt of the Catholic religion. The surest thing is that, in defiance of the present Leonine excommunication, subordinate workers are called to erect non-Catholic temples out of hatred for the Catholic religion. Therefore, pastors and confessors should diligently question such workers.

[*Latin ed. p. 177*]

Instruction 177: Such material works are to be avoided when the work is commonly considered a Protestant sign of a false religion; and when the work itself signifies, either directly or indirectly, either the disapproval of the Catholic religion or the approval of the condemned heretical religion; or when it is certain that these individuals are compelled or called by heretics to work in contempt of the Catholic religion; and in no case is it permissible to intend to cooperate with the heretical cult. Furthermore, fathers and mothers are guilty of a most grievous sin when, truly cruel towards the souls of their children, they send them to Protestant schools; and even worse if they force them to go there. It is evident that such parents are to be utterly condemned and detested in their wrongdoing, and their amendment must be sought by all possible means, and in the meantime, they must be kept far from the Sacraments, as manifestly incapable and unworthy, until they have withdrawn their children from such guilty schools. Acta,

Translated by churchlatin.ai, a product of Boyne Archives

vol. XI, sect. CXXIV. 12.

[*Latin ed. p. 178*]

Instruction 178. Even the children, for the matter itself considered, certainly, by attending such schools, become guilty of a grave sin. But in the case of true coercion, the confessor, having weighed the circumstances of persons and of fact, should act towards them according to the rules suggested by approved authors for such contingencies. Let the reverend pastors take care to keep these prescriptions alive in the minds of the faithful, and to read this instruction during the parish Mass or another more frequented function on festive days. Rome, from the Vicariate, July 12, 1878. R. Card. VICARIUS.

The children also, for the matter itself considered, certainly become guilty of a grave sin by attending such schools. But in the case of true coercion, the confessor, having weighed the circumstances of persons and of fact, should act towards them according to the rules proposed by approved authors for such cases. Let the pastors strive to ensure that these prescriptions are kept in the minds of the faithful, and that this instruction is read at the time of the parish Mass, or another more frequent function on festive days.

Rome, from the Vicariate, July 12, 1878. R. Card. VICARIUS.

Neither once, nor again, nor hastily. Rather, the pastors must act diligently in this matter, and frequently remind and instruct the faithful about the prescriptions of this kind laid down by Our Lord, and explain them clearly and comprehensibly to all. They should exhort, implore, and even rebuke parents, especially those who send or force their children to attend Protestant schools. Let them roar against these as lions, remembering the words of the Lord: "The young man, according to his way, even when he is old, he shall not depart from it" (Proverbs 22:6). Nor do we fail to implore the Bishops, with the reverence due to them, to order, by published edicts, the pastors to diligently apply themselves to this matter (for not only in Rome are temples erected, or schools opened, by the Protestants). For, through the diligent efforts of pastors and ministers of the Catholic Church, heresies and vices have always been suppressed. But on the contrary: "But while men were asleep, his enemy came and oversowed cockle among the wheat and went his way" (Matthew 13:25).

[*Latin ed. p. 179*]

FROM THE SACRED CONGREGATION OF BISHOPS: CONCERNING THE OPENING OF CHURCHES AND RESIDENCES. Session VI, Chapter II, on Reforms. Dated September 22, 1877. Summary of the case. - In the ancient and illustrious city of A, there exists a Church, which is a Cathedral, and its Chapter is composed of ten Canons and two dignitaries. Furthermore, within this Chapter, there has existed for a long time a custom,

Translated by churchlatin.ai, a product of Boyne Archives

according to which those Canons who were not originally from the city of A, have not usually resided in that city, as the law of residence seemed to require, but in the city of P, located three Roman miles from the Cathedral Church, and inhabited by eight thousand people; in which city the Bishop resides with his Seminary and all civil offices. And yet, no detriment to the divine worship resulted from this; since the Canons residing in the city of P would daily come to the Cathedral Church to perform the divine services and other ecclesiastical functions. The cause of this custom appears to be the unhealthiness of the air, the plagues, and the earthquakes, by which the city of A was so depopulated that it no longer offered a safe refuge, nor suitable dwellings in which the Canons could reside. Although, over the course of this very long and ancient period, many things have occurred which, through the favor of the Holy See, have been established for the Canons residing in the city of P, and which will be presented in a concise discussion; nevertheless, in the year 1853, through an opportunity presented by a Papal Bull, by which the town of P was elevated to the status of a city, the Bishop was granted the faculty of residing in this city of P, and therefore all the Canons of the city of A,

[*Latin ed. p. 180*]

180 Certain individuals, having opened their mouths and residing elsewhere, while others remained in the city of P., without consultation, and after all previous matters favorable to them had been silenced, appealed to the Sacred Congregation of the Consistory, presenting several doubts for resolution, among which was the matter concerning the residence of the Canons in the city of P. Therefore, the Sacred Congregation of the Consistory considered it appropriate to respond to the fourth doubt concerning the residence of the Canons as follows: "4. Finally, the cities of A and P are not to be considered entirely equivalent, nor should they be equivalent in any way with regard to the Canons, for whom one is presumed to be, namely, that the Canons of the Cathedral of A may fulfill their residential obligation, provided that they reside in the city of P." The Canons residing in the city of P., pressed by the Bishop to enforce the aforementioned decree, had no recourse but to appeal to the Most Holy Prince. Indeed, on May 4, 1876, those Canons, numbering five, presented an appeal to Him, requesting that, after the revocation of the aforementioned decree of the Consistory, it be declared that the Chapter Canons, both present and future, fulfill the obligation of residence, even though they reside in the city of P.; and this, moreover, because the choral service is laudably performed by them. The Bishop commended the prayers of the petitioners with a letter sent to the Sacred Congregation of the Council, in which, after praising the diligence of the Canons who petition, in daily performing the divine offices in the Cathedral Church, he himself gravely doubts the healthiness of the air in the city of A, affirms that the defects of the houses in that city still

Translated by churchlatin.ai, a product of Boyne Archives

prevent a suitable dwelling for the Canons, and testifies beyond all doubt that the Canons, not originating from the city of A, have always resided in the city of P. Finally, he brings forward as the principal reason why the prayers of the petitioners should be heard, namely, that the residence of at least five Canons in the place where the Bishop resides appears not only useful, but absolutely necessary.

[*Latin ed. p. 181*]

Opening of Proceedings and Residence, 181. Having received these matters, the Congregation of Holy Councils, on May 10th of that same year, decreed: "To the aforementioned Auxiliary Bishop, who shall hear the Chapter in writing and report on how the Canons have behaved after the decree of the Holy Consistory concerning which matters were presented, it is commanded." The Bishop acted in accordance with the mandates of the Holy Congregation, and after hearing the Chapter, he submitted a written opinion to the same Holy Congregation; this opinion, supported by the votes of seven Canons (since five Canons who were present abstained from voting), was contrary to the request of the members. Furthermore, the Bishop stated that the decree of the Holy Consistory had always been observed in such a way that the exercise of certain rights had been denied to those who were not residents, rights which are due according to custom to those who are residents. Given these circumstances, a rescript was issued on July 31st, 1876: "From the hearing of the Most Holy Fathers on August 7th, 1876. The Most Holy Fathers have approved that the case may be discussed in a plenary session of the Most Reverend Fathers, with the clause that the opening of proceedings is at their discretion, and that it shall be noted in the record." Synopsis of the Discussion. Part I. JURISPRUDENCE. It is well-known in law that, against Decrees or Rescripts of the Pontiffs, especially when it is shown that through them a right has been granted to someone, an opening of proceedings is permissible, if something necessary for obtaining it is not expressly stated, or if something false is alleged. Chapter on Uterine Matters concerning Rescripts: Chapter 19 on Rescripts and Chapter 1 on Constitutions, in the 6th Council. The Sacred Rota in Tefracinen, or Setina, on June 1st, 1819, page 3, before the Most Reverend Odescalchi, etc. Indeed, in obtaining the Consistory Decree against the Canons residing in the city, more things were concealed from the opponents, which must necessarily be made clear; therefore, it is clear that a decree of this kind suffers from the vice of deception. CANONS OF THE CITY. In the proposition of doubts presented to the Holy Consistory Congregation, the fact that...

[*Latin ed. p. 182*]

182 Concerning the matter of residence and the obligation, it is clear that the Canons, who do not originate from the city A, have, from time immemorial, transferred their residence to the city P, and have always remained

Translated by churchlatin.ai, a product of Boyne Archives

there. And since it was exceedingly difficult, indeed almost impossible, for these Canons, especially given the long distance, to attend daily and twice daily at the Cathedral Church for the performance of divine services, the Congregation of the Holy Council, after hearing the Ordinary, graciously granted that the Canons might recite the entire Office, both in the morning and with Vespers and Compline, until the city of A had fulfilled the obligation by which it had undertaken to construct a canonical house. This decree was subsequently confirmed by the same Holy Congregation on September 6th, in the year 1726. From these decrees, it appears that the Canons may reside in the city P until the canonical house has been built; which has not yet been done. Furthermore, no mention whatsoever, not even the slightest, has been made by the Canons of the opposing party regarding these indulgences. Moreover, the Capitular statutes, accepted by all the Canons on December 30th, in the year 1703, and approved by the Most Reverend Vicar of the Bishop, have been entirely overlooked. In the event that a Canon residing in the city P should die, Article VII stipulates that the Canon who has passed away shall be associated with the Chapter. Furthermore, Article VIII instructs the Curator to warn and summon all those residing in the Chapter in the city P, if ecclesiastical functions are to be celebrated in the Cathedral Church. And since, over time, it came to pass that the Canons of the city A would bring the bodies of the deceased to be buried, without previously informing their confreres residing in the region of P, the Bishop himself, by edict on January 25th, 1716, disapproved of the actions of those Canons, considering them contrary to the Capitular statutes. Finally, not even a word has been said regarding the fact that the Bishop has consistently mentioned this non-residence in his reports to his Diocese, without the Holy Congregation of the Council having raised any objections or suggested any measures for the future.

[*Latin ed. p. 183*]

The opening of the case and the residence, item 183. Indeed, in the year 1779, when the Canons residing in the region of P. were not fulfilling their choral duties, and when Canons residing in the city of A. were assigned to fulfill such duties, neglecting their assigned distributions, the Congregation of the Council, having been informed of this matter, immediately responded, ordering the absent Canons to attend the daily Office in the Cathedral, and without prescribing anything concerning the establishment of their residence in the city of A. From all of these circumstances brought to light, the Canons argued that a Pontifical Indult, granted to them for residing in the city of P., should be presumed to exist; although no document concerning it could be found. This should not surprise anyone, if one considers for a short time that the archives, both of the Curia and of the Cathedral Church, have been subjected several times to earthquakes and fires. Therefore, since all that which has been concealed by the Canons on

Translated by churchlatin.ai, a product of Boyne Archives

the opposing side are things which necessarily would have been made manifest, it was concluded that the Consistorial Decree was obtained through deceit and that, therefore, it should be subject to the judgment of the opening of the case. Thus, regarding the matter of the Decree obtained through deceit, the Canons residing in the city of P. demonstrated that they were not obligated to reside in the city of A. For, if one considers not the material aspect, but the formal aspect of the obligation of residence, to reside does not so much mean being physically present in the place of the benefice, as rather, as Fagnano states in Chapter Conquerente, number 7, concerning non-resident clerics, and in Chapter Licet, number 23, concerning prebends of the proper Church, to serve in the divine offices: for benefices are instituted for the sake of duties, and the obligation of residence is ordered in order to fulfill those duties. Fagnano concurs with Pirhing in book 3, Decret, number /, who further states that a cleric should be considered as not residing, even if he is physically present in the place of the benefice, if he does not perform his office. Now, the Canons residing near the city of P., indeed, presented themselves daily at the place of their benefice.

[*Latin ed. p. 184*]

184 To diligently attend to the service of the Cathedral Church and to dedicate oneself to divine offices, as was evident from the aforementioned letter sent by the Bishop to the Sacred Congregation of the Council. Furthermore, they noted that in Fagnano, *De Cetero, De Cleric. non resia*, nos. 12 and 13, it is stated that Canons who are absent from the Church are considered to be present for the purpose of fulfilling their duties to the Bishop, and are considered to be serving the Church... since the Church is in the Bishop, *Cap. Scire debes* 7, q. i, Cap. Similarly, *Cap. Haec huius placiti* 12, q. 2, and the Glossa notes this, *Host, in princip.*, and all others. Indeed, several Canons in the city of P. maintained that their presence there was not only useful but absolutely necessary, based on the aforementioned statements of the Bishop. For, the Bishop argued, if, according to the law, the Chapter of the Cathedral Church constitutes the Senate of the Bishop, how can this diocese be properly governed with the entire Chapter residing elsewhere? However, even if it is required by law for a physical presence, the Canons had been dispensed from this requirement, both by the Sacred Congregation of the Council, which granted the Chapter permission to recite the entire office in the morning, and by the statutes and the venerable custom. For it is the nature and force of a long-standing or venerable custom that those who invoke it may allege a title from a better source. Card. De Luca, *De benef.*, disc. 32, nos. 2 and 4. Bonf. *de Iure Fideicom.*, disp. 114, no. 31; Rota coram Olivatio, decis. 624, no. 8, and coram Ansaldo, dec. 346, no. 11, where it is stated that an immemorial or *centenaria* ”is so effective that it fulfills the role of an expressly granted Apostolic privilege, with the only difference being the nominal distinction between a tacit and

Translated by churchlatin.ai, a product of Boyne Archives

an express [granting]..." 7 Moreover, they asserted that it does not help to undermine this doctrine that the Council of Trent, session 24, cap. XII, *de reform.*, expressly condemned statutes or customs that are contrary to it, and therefore cannot be introduced. Wisely, Card. De Luca observes, *De Can. et Cap.*, disc. 12, no. 6: "However..."

[*Latin ed. p. 185*]

"Regarding the opening of doors and residence, 185: 'This is considered a purely temporal benefit, or rather, a prescription'; however, if a special Apostolic concession is alleged, and evidence of its observance is presented, which serves as presumptive proof, then it is not a matter of directly invalidating a decree, but rather of questioning its proper understanding."

The Canons argued that it had been permissible for them to remain in the city of P, even after the Consistorial decree, and that they could not be compelled to reside in the city of A, where there were still a lack of suitable dwellings and a healthy environment. Therefore, the Episcopal Curia, along with the Seminary and public offices, had been transferred to the city of P.

"RIGHTS OF THE CANONS OF THE CITY OF A."

Conversely, the Canons residing in the city of A maintained that the decree of the Congregation of the Consistory, which they had obtained, was not tainted by any deceit, and therefore, the opening of doors should not be granted at their discretion. For decrees are considered to be based on deceit and have no validity when something is concealed that, if known, would have resulted in the decree not being granted, or a different decision being made. However, this is not the case here.

The recourse to the Sacred Congregation was promoted for the resolution of certain doubts, which had no connection whatsoever to the reasons for the case or to any claim of possession, however ancient, but which were to be resolved solely on the basis of legal principles. Therefore, since all those matters that, according to the opponents, should have been made manifest, were irrelevant to the matter at hand and did not serve to indicate the intent of the writer, it was entirely unnecessary to mention them.

Regarding the obligation of residence, which compels the Canons residing in the city of P, it was recalled that, according to established law, all Canons are bound to personal residence in their respective Cathedrals or Collegiate Churches. This obligation clearly follows from the general provisions of the law, as can be seen in Chapter Quia nonnulli, paragraph 4; and in Chapter Conquerente 6, Concerning Clerks Not Residing. And the text in the Council of Trent, Session XXIV, Chapter XII, paragraph 7,

Translated by churchlatin.ai, a product of Boyne Archives

agrees with this.

[*Latin ed. p. 186*]

"Furthermore, concerning those holding dignities, canonries, prebends, or benefices in Cathedrals or Collegiate churches, it is not permitted, by virtue of any statute or custom, to be absent from those churches for more than three months in any given year." Having admitted these common principles of law, they asserted that the opponents, seeking excuses from the obligation of such a law, were acting in vain. Indeed, the city A is presently so replete with houses and dwellings that it can offer a suitable and sufficiently comfortable asylum for canons residing in the city P. Moreover, the mildness of the climate and the healthiness of the air are clearly not lacking there, as evidenced by the fact that the number of citizens has increased from 1600 to 3000 in just a few years, and that all enjoy excellent health, including those canons who spend their days in the city A, many of whom, although born elsewhere, have reached a ripe old age. Furthermore, the canons continued, the custom that the opponents so vehemently defend is of no avail; for, since it has been condemned by law, it cannot possess any force or efficacy, according to the words of the Council of Trent, Session 24, chapter 12, concerning reform. This Tridentine decree is followed by the subsequent papal declaration issued in 1573, found in Lib. i, Decret. Congr. Conc., p. 33 verso: "Our Holy Father, also according to the opinion of the Holy Congregation of Councils, declared that an unmemorable custom cannot excuse from residence in Cathedrals and Collegiate churches with dignities; but in Collegiate churches without dignities, it can excuse, etc." Since any custom, even if unmemorable, must be disregarded and is entirely devoid of value; therefore, the canons cannot derive any privilege or dispensation from it to reside elsewhere. If, however, a dispensation were to be supposed, as something odious, it must be strictly interpreted and understood as granted under the condition that the reasons for which it was granted still persist. These reasons are lacking in this case, since suitable dwellings and a healthy climate are present. Nor can the reports of the Bishops, made during visitations *ad limina*, nor the capitular constitutions be considered. Because..."

[*Latin ed. p. 187*]

The opening of a cause and the residence [of a bishop], as an accessory, are joined to a papal indult; which, as stated, must be considered conditional in this case. What, however, the tenor of a presumed indult should be understood, is drawn from the words with which the Sacred Congregation of the Council responded to the first question concerning the bishop's residence. Indeed, it is read that an obligation is imposed on the bishop to return to the city of A, as soon as he can conveniently do so: "and he [the bishop] must reside only in the city of A, as soon as it can

Translated by churchlatin.ai, a product of Boyne Archives

conveniently happen." With the foregoing noted, the following questions were proposed: I. Is there a place for the opening of a cause in this case? And, to the extent that it is affirmative, II. Are the canons obligated to reside in the city of A in this case? RESOLUTION. The Sacred Congregation of the Council, after examining the case, on September 22, 1877, judged it fitting to respond: To I. Affirmative. To II. Negative, and nothing is to be changed in the present state of affairs. FROM WHICH IT MAY BE GATHERED: I. The opening of a cause may be granted against a papal rescript whenever something necessary has not been expressed, or when something false has been alleged in its petition; and this all the more so if the right of a third party has been sought and denied. II. However, in order to obtain the judgment of the opening of a cause, it is necessary that some suspicions arise, which call into question the Pontiff's will, so that unjust and futile lawsuits may not be initiated. III. Therefore, the opening of a cause must be denied whenever there is deceit and fraud; because the decrees of the Pontiffs...

1. *Aperitio oris* is the permission that must be obtained from the Holy Father before anyone can dispute a case to which papal decrees have been issued to bring it to an end.

[*Latin ed. p. 188*]

I. The opening of a cause and the residence of a cleric are valid, even if the right of a third party has been superseded by a rescript, provided that the clause is not obstructed by an "immemorabile" custom.

II. It appears that the canons residing in Rome have omitted certain points in their petition, which, if known, might have altered the outcome of the Consistory decree.

III. A custom of very long standing, or the force of written law, is considered to be a better title than any worldly claim, and it takes precedence over the presumption of a pontifical grant, unless it is proven otherwise; and it holds an unassailable place in the process of proof.

IV. An "immemorabile" custom appears to exert its force, even in Trent, indirectly; if it is not alleged as a pure benefit of time or a prescription; but to the extent that it is brought forward as presumptive proof of some Apostolic concession; because then, the decree of Trent is not directly invalidated, but rather it appears that the matter concerns its non-comprehension.

V. The Council of Trent, Session 24, chapter 12, speaking of the residence of canons, decreed: "Furthermore, those holding dignities, canonries, benefices, or portions in the same cathedrals or collegiate churches, are not permitted, by virtue of any statute or custom, to be absent from those churches for more than three months in any one year."

VI. Knowing this, canons living far from the cathedral have appropriately used the "immemorabile" custom of absence from the cathedral, not

Translated by churchlatin.ai, a product of Boyne Archives

to invalidate the decree of Trent, but to demonstrate some pontifical grant by which canons were formerly excused from residence in the cathedral city due to the lack of suitable dwellings and unhealthy air. And they have accomplished this easily, because, according to the opinion of the canonists, the force and nature of an "immemorabile" custom is such that whoever invokes it appears to claim a better title than any worldly claim, even a privilege, or a decree or grant and approval of the Apostolic See.

VII. We have stated that, according to the common opinion, any custom cannot invalidate the decrees of Trent; and that in the Bull of Pius IV, which is read at the end of the same Council, there is a decree that nullifies all that which stands in the way of that sacred Council; from which it follows that this invalidation falls upon all that which is an obstacle to each chapter of the same.

VIII. However, in these days, such an opinion is not so universally held; because more and more people begin to doubt whether a custom of very long standing can detract from the decrees of Trent, even in spite of the decree of invalidation, by which all that is rejected.

IX. I will now defer to the learned Professor De Angelis, who in his recent work, "Praelectiones iuris canonici, lib. 1, tit. 4, n. 12," explains how this matter stands: "Can a custom of very long standing invalidate the decrees of the Council?"

[*Latin ed. p. 189*]

Regarding the opening of doors and residence, section 189, VII. Concerning a memorable custom, supported by an indulgence granted with the recitation of Vespers and Compline in the morning by the Canons residing in the City [Rome], which has been considered as presumptive evidence of a papal indulgence, whereby they are excused from residence; and not, indeed, as a direct denial by the decree of Trent through unusual contrary observance. CONCERNING THE ASSISTANCE OF THE SICK. THROUGH BRIEF PRAYERS. On March 23, 1878, Bishop B. presented the following petition: "Although the Ritual book of St. Rome, given to the Congregation [of Rites] with its commentaries, clearly states that parish priests are obligated to assist the dying... nevertheless, in fact, because it is a laborious matter, this salutary discipline has rarely been observed, and now it seems to be frequently obsolete, so that the custom of assisting the sick with the Sacraments might hinder the observance of the decrees of Trent. The Council of Trent has the same authority as other General Councils; therefore, if custom can be used to undermine the canons of General Councils, it can also be used to undermine the canons of the disciplinary decrees of Trent. On the other hand, the Roman Pontiffs, insisting on the inviolable observance of these decrees, have not nullified the force of custom, which possesses the aforementioned qualities. Rather, it should be noted that more customs that undermine the decrees of this Council are disapproved because they

Translated by churchlatin.ai, a product of Boyne Archives

are irrational, and the judge regarding rationality, as we have said, is the Superior; and in this case, the Roman Pontiff, or the Congregation of the Holy Council. That a custom can have validity even against the decrees of the Council of Trent, only he can deny who, for example, retains all parochial benefices throughout the world without concurrence, or without completing the form prescribed by the Council of Trent, Session 24, chapter 18, concerning the revocation of illicit appropriations, and thus provides or institutes things that lack jurisdiction; which cannot seriously be affirmed."

[*Latin ed. p. 190*]

190 Concerning the assistance of the sick: Many pastors, having visited the sick only occasionally, neglect to assist the dying, without any prompting of conscience, especially in populous parishes, entrusting this task and such a necessary work of mercy only to women. Hence, so that in this matter, on which eternity depends, every error may be diligently avoided, and every corruption of the root eradicated, the following questions are humbly and earnestly proposed for clarification. Ordinaries indeed commend the parochial ministry to the dying in their statutes, but pastors do not accept it as a binding obligation, but rather as a pure and simple piece of advice. Only the supreme authority of the Holy Roman Church can correct this abuse, clearly defining the law.

Therefore, the following is asked:

I. Are pastors and others who have care of souls bound to assist the dying, even if they have duly administered the Sacraments to them?

II. Is this obligation a grave one?

III. Does this same obligation apply to the dying who have lived piously and appear to be well disposed?

IV. Are pastors, if hindered, bound to provide another priest, if one can be found?

V. Are they bound to remain present until the very last breath, even in a long agony?

VI. According to the mind of St. Charles Borromeo, are only two causes admitted for dispensing from this obligation: namely, the necessity of assisting other sick people, of administering the Sacraments to other infirm persons, or of other necessary occupations?

VII. Among the other excuses that may be offered, are a somewhat weak health, a not very urgent business, the distance of places, the difficulty of roads, the nighttime, inclement weather, the danger of contagion or some other evil, uncertain agony, considerable fatigue, the unwillingness of the family of the sick, and too frequent occurrences, legitimate impediments

Translated by churchlatin.ai, a product of Boyne Archives

for assisting the dying, as in hospitals?

[*Latin ed. p. 191*]

Regarding the care of the sick:

VIII. Are pastors obligated:

1) To warn parishioners who are unaccustomed to it about the necessity of calling the pastor in cases of serious illness, and about the obligation to provide easy access for the dying.

2) To remove serious obstacles so that they may find a way to assist the dying? A synoptic discussion.

And with regard to the first point, it must be noted that this is a matter of pastoral duty. According to the words of Scripture: "Therefore, rejoice, O heavens, and you that dwell therein. Woe to the earth and to the sea, because the devil is come down unto you, having great wrath, knowing that he hath but a short time." (Apoc. 12). He knows that those who are in great danger at the end of life receive little care. Indeed, "the most cunning and wicked enemies of our souls, the demons," – thus Dionysius, *art.* j – recognizing that death is the end of merit and demerit, and that souls remain in the state in which they are when they depart from their bodies through death, most fiercely tempt those who are dying at that very hour. Therefore, the benevolent Mother Church has established salutary provisions regarding this matter, among which it is particularly important to remember those found in the Roman Ritual, by order of Gregory XIII, at the beginning of the chapter "Modus adiuvandi morientes" (The manner of assisting the dying). Similarly, in the Roman Ritual, revised by Benedict XIV, in chapter "De administratione Extremae Unctionis" (Concerning the administration of Extreme Unction), it states: "The pastor should also admonish the family members and servants of the sick, that if the illness worsens or the sick person begins to suffer, they should immediately summon the pastor to assist the dying person and commend his soul to God; but if death is imminent, the priest will commend the soul to God before he departs." And in the following chapter, "De modo adiuvandi morientes" (Concerning the manner of assisting the dying), it states: "As the illness worsens, the pastor will visit the sick person more frequently and will diligently strive to help him towards salvation; and when the danger is imminent, he will remind him to call for him immediately, so that he may be present for the dying person in time." This solicitude of the benevolent Mother Church towards the dying is most clearly evident in the provisions found in the Rituals.

[*Latin ed. p. 192*]

Concerning 192 instances of assistance to the sick in particular dioceses, and in all of these, it is prescribed that priests should attend to the dying until they expire. Martène, in book 1, on the ancient rites of the Church. Fur-

Translated by churchlatin.ai, a product of Boyne Archives

thermore, both Provincial and Diocesan Synods, as well as Benedict XIV in his Constitution *Firmandis*, number 10, and Frasinetto in his manual for the new parish priest, state: "When the priest administers the sacraments, he ought to remain with the sick person until the very end; and it is a practice, or rather a custom, which is observed in some places, whereby the parish priest, after administering the sacraments to the sick person, does not visit his house again."

Regarding the second question, whether this obligation is of a grave nature, there is a divergence of opinion among theologians. Some maintain that this obligation is binding on the parish priest under a grave penalty: Barbosa, in *De Officio Parochi*, part 1, chapter 7, number 26, states: "If a sick person begins to suffer agony, the parish priest has a greater obligation to assist him, and it is a most important and necessary ministry to help those who are dying, from whom depends their eternal salvation. For this reason, the opinion of those who believe that the parish priest is not guilty of mortal sin if he does not attend to the sick person who is near death after he has received the sacraments must be completely rejected; for he would be guilty of most serious sin if, when he could conveniently do so, he abandoned him; and the gravity of this sin must be increased by the circumstance of time, in which the sick person, if he ever needs the help of his pastor, is certainly at the very moment when the devil is lying in wait for him."

To this must be added another, even more serious consideration, namely that the sick person may need to confess a new sin, which often happens, and therefore the parish priest who abandons the sick person cannot be excused from mortal sin.

Furthermore, the statutes of many Provincial and Diocesan Synods, which impose severe penalties on those who neglect this duty, undoubtedly hold that such neglect constitutes a mortal sin.

[*Latin ed. p. 193*]

Regarding the assistance of the sick: 193. On the contrary, there are not wanting those who hold the opposite opinion, among whom Possevinus should be mentioned, who in his treatise *De officio Curati*, chapter XIII, number II, after asserting that the pastor of souls is bound to provide assistance to the dying, asks whether this obligation is grave, and answers: "I do not believe it, because the matter seems light, unless it is the case that the one who has been reduced to such a state is afflicted with a mortal illness... or is persevering in a state of great mortal need, because in this case, the pastor seems to be bound in every way and manner to care for the salvation of that person as long as there is breath remaining, and I believe he is bound all the more strongly, the more dangerous is the imminent and irreparable loss of the dying person." Regarding a third point, I believe it is worth noting a doubt: that at the very hour of death, demons make the greatest efforts

Translated by churchlatin.ai, a product of Boyne Archives

to devour and snatch away souls eternally; hence, it is clear that those who have lived in wicked habits are exposed to greater danger than those who have led a life of piety and virtue. Therefore, the obligation towards those who have lived in a wicked and corrupt manner, which readily provides access to the enemy, is even greater than the obligation towards those who have lived a Christian life. Furthermore, the author, as mentioned above, rightly observes: "Since this person is in great need of repentance, the pastor seems to be bound in every way and manner, as long as there is breath remaining, to care for his salvation, and I believe he is bound all the more strongly, the more dangerous is the imminent and irreparable loss of the dying person." The Roman Ritual also recognizes this greater need to assist the dying who are poorly disposed, as it expresses itself in the chapter on the manner of assisting the dying. Therefore, the Roman Ritual admits a greater degree of zeal in those who are in greater need of help in their final struggle. Finally, it should be noted that if the dying have lived piously and appear to be well-disposed, the assistance of the parish priest is indeed good, but not necessary, "according to the general interpretation," as the same author observes in the aforementioned passage, number 5. Regarding a fourth point, a doubt seems to arise. Although the arts of demons are to be resisted, *Acta. tom. XI, fase. CXXIV. 13*.

[*Latin ed. p. 194*]

Concerning the assistance of the sick, the presence of any priest is very beneficial, but it will especially benefit the parish priest, because, having been appointed by God as the pastor and guardian of that soul, it must be believed that the supremely merciful God will grant greater graces for the salvation of the soul whose care has been entrusted to him. Therefore, when the parish priest neglects the sick person after administering the Sacraments, he deprives him of a special benefit that he can hope for from his pastoral assistance at the very end of life. However, because the duties of parish priests are numerous, it can easily happen that two duties arise that cannot be performed simultaneously, so that the visitation and assistance of the dying are often neglected. Therefore, the Roman Ritual, foreseeing this situation, states: "If the parish priest is legitimately hindered and cannot sometimes visit the sick, especially when there are many, he will take care to have this done by other priests." Although the Roman Ritual now speaks in a general way, without distinguishing between the various degrees of illness, I believe that it also had in mind the case in which someone is in a very serious condition. Therefore, after the Provincial and Diocesan Synods have determined that the parish priest, either personally or through another priest, is obligated to provide assistance to the dying, I think it is appropriate to recall the words of St. Charles Borromeo in the Council of Milan, IV, where he states that another priest should be sought in the case in which the parish priest is legitimately hindered from

Translated by churchlatin.ai, a product of Boyne Archives

assisting the dying, namely: "Where this office (the administration of the Sacraments) has been faithfully and accurately performed (by the parish priest), if the sick person is still alive or conscious, 'let him not be absent, but let him diligently attend to all things that are salutary.' But if he cannot be present at all, either because he is needed to administer the Sacraments to other seriously ill people, or because he is occupied with other necessary parish duties, then let those acts of piety be diligently provided by another priest, if there is one in that place." Regarding the question raised in the fifth doubt, it should be noted that Possevin, in the aforementioned passage, when asked: "Is the priest obliged to remain with the dying, day and night?" answered:

[*Latin ed. p. 195*]

Concerning the assistance of the sick: 195. "If someone is dying and impenitent, I believe that in every way and by every means, while breath remains, one must strive to procure his salvation, and the more dangerous the imminent and irreparable loss, the more seriously this obligation should be taken. If, however, he has received the Sacraments and has lived a Christian life, it is good to remain with him, but it is not necessary, as general custom interprets it." Regarding the sixth and seventh propositions, it is impossible to doubt that these questions contain various cases. Indeed, it seems very difficult to determine, in this case or in any other specific case, the true and proper reason for a dispensation from the duty of assisting the dying. Rather, the circumstances presented to the parish priest should be considered, as well as the condition of the dying person and his moral qualities. Even St. Charles Borromeo, foreseeing this difficulty, refrained from enumerating the cases that might warrant a dispensation, and spoke only in general terms, leaving the conscience of the parish priest to decide when those circumstances might arise. From what has been discussed so far, it clearly follows the final question. If the Roman Ritual does not prescribe that the parish priest should warn the family members and attendants of the sick that, if the illness worsens, they must hasten to assist him, and if he is obligated in every way to care for the salvation of souls entrusted to his care, it seems clear that the parish priest not only ought to warn unfamiliar parishioners about the obligation to call for him, and to provide them with easy access, but he is also bound to remove serious obstacles so that he may pave the way for the dying. For he who is bound to the end is also bound to the means. With these considerations in mind, it was deemed prudent by the Most Eminent Congregation to decide with what response the proposed questions should be answered. RESOLUTION. The Sacred Congregation, after discussion on March 23, 1878, decided to respond: "Follow the prescriptions of the Roman Ritual; in other matters,

Translated by churchlatin.ai, a product of Boyne Archives

consult approved authors."

[*Latin ed. p. 196*]

Regarding the 196th reason [among those] by which [one] does not wish to be excused, [there are] considerations concerning the assistance of the infirm: perhaps the Holy See [Sacra Congregatio] deems that, in this grave matter, both the Roman Ritual and grave and approved authors often indicate a strict obligation, by which pastors of souls are pressed concerning the diligent assistance to the dying.

II. For if anyone observes that, in the supreme hour of death, from Holy Scripture, « Therefore, rejoice, O heavens, and you that dwell therein. Woe to the earth and to the sea, because the devil is come down unto you, having great wrath, knowing that he hath but a short time. » (Apocalypse 12:12), then those who are appointed to that office, namely, the parish priest or another, are bound to redouble their care, so that in the extreme danger of death they may deliver souls from the clutches of that most cunning enemy.

III. It is derived from the most serious authors, not only from charity, but also from justice, that parish priests are bound by the burden of assisting the souls entrusted to them at that extreme point, from which, whether for good or for evil, eternity depends, and it is not easily excused for one who would despise fulfilling this.

IV. And therefore, the obligation of providing such assistance, whether by themselves or by others, urges the parish priests concerning those who are near death, who, having lived habitually in a wicked manner, are in greater need of help in the extreme struggle to overcome the malignant enemy.

V. Finally, the Holy See [Sacra Congregatio], perhaps, did not wish to definitively determine a certain norm in the subject matter; because, on the one hand, it is certain that a burden exists, and on the other hand, it is very difficult for parish priests to be relieved of the obligation of assisting the dying, considering both their own circumstances and the state of the dying person, and his moral qualities.

VI. Therefore, it seems that the matter has been left to the conscience of the parish priests to carefully consider the quality of the various circumstances of each case; and to judge whether those circumstances are such as to free a prudent pastor of souls from this grave burden, keeping in mind both the prescriptions of the Roman Ritual and the opinions of approved authors.

[*Latin ed. p. 197*]

FROM THE HOLY CONGREGATION FOR THE REINTEGRATION OF BISHOPS AND REGULAR CANONS. A summary of the facts. To entice brothers to attend the sacred services, the Sodalitas N. allocates four annual grants, to which a title of honor is added. The right to obtain these grants

Translated by churchlatin.ai, a product of Boyne Archives

is determined by the specific statutes of the Sodalitas. In Chapter 37, it is stated: "To resolve any doubts or controversies that might arise concerning the grants for attendance... the grant should be awarded only to those who have earned points for five out of six parts of the year." However, to ensure that the acquisition of each point is regulated by certain rules, it is stipulated in the same Chapter 37: "1. Each brother who participates in the grants for attendance must ensure that his name is entered in the attendance register by the Secretary immediately upon entering the Oratory. 2. No assistance should be given to anyone who arrives after the beginning of the first reading of the Office. 3. A point will not be granted to the infirm unless they have informed the Governor of the Fraternity of their infirmity." In August of 1875, as was customary for the Sodalitas, the Secretary prepared a record of points and displayed it in the Oratory, so that anyone interested could be informed. For the entire year (from September 1874 to August 1875), the maximum number of points earned was seventy-two, and five-sixths of the points amounted to sixty. One brother had only obtained fifty-nine points. On August 25th, he began to voice complaints in the general assembly, claiming that he was being excluded from the drawing for the grants, arguing that he had sometimes been unable to attend the sacred services due to illness.

[*Latin ed. p. 198*]

Regarding Reintegration 198 and the regulations concerning the sick, who are to be considered present: therefore, thirteen brothers were granted one vote each. However, when certain brothers, having obstructed the proceedings, were found to have been present, and Z. had informed the Governor of the Sodalitium of his infirmity on several occasions, it was determined that these brothers had been granted a vote each time; consequently, their complaints were rejected. Therefore, Z. presented a petition to the Sacred Congregation of Bishops and Regulars, requesting that, pending a resolution of the matter through legal channels, the distribution of the dowry subsidies be suspended. The matter was delegated to the Ordinary for information and a vote, who then ordered the brothers to convene again so that Z. could present his case. Therefore, meetings were held on March 26, 1876, at which it was decided, by a majority of votes, that the complaints of Brother Z. could in no way be accepted. Meanwhile, Z., who had been endowed with a contentious nature, and who had already, on more than one occasion, been reprimanded for insults directed at the brothers and superiors of the Sodalitium, had been punished with suspension; he was so unruly that his continued provocations caused frequent disputes, which quickly escalated into quarrels. Consequently, some of the brothers requested that, in order to remove the scandal, Z. be considered present, even in his absence, provided that he refrained from attending the meetings; others, fearing scandal and the corruption of their own souls, where

Translated by churchlatin.ai, a product of Boyne Archives

consolation in God was offered, chose to abstain from attending altogether. On August 27, 1876, new meetings were held, in order to apply the sanctions to the brother for his misconduct, in accordance with the regulations of the confraternity, which prescribe that an incorrigible brother must be removed from the Sodalitium. Then, those brothers who had left Rome during the summer and had not been present at the meeting of August 27, upon learning of the resolution, solemnly confirmed it: protesting, as one, that they would abandon the confraternity if Z. were to be readmitted among the brothers. And indeed, the majority and better part of the members subscribed to this protestation.

[*Latin ed. p. 199*]

19. Even in this matter, the Ordinary's opinion was known to the Holy Congregation, since the Sodalitas had opposed both questions. The cause, proposed on economic grounds, was discussed in the assembly on February 16, 1877, on which day a response was given to the Most Eminent Pontiff. However, when the Most Eminent Pontiff's concern for reconciling hearts had ceased, a new dispute arose, and a fierce struggle ensued, as follows.

A Synopsis of the Dispute.

WHAT BROTHER Z. ALLEGED.

He established a twofold treatment of the matter, for two questions: one concerning his exclusion from the distribution of charitable subsidies by the Sodalitas, and the other concerning his expulsion.

Regarding the first point, he invoked the constitutions of the Fraternity, by which it is stipulated that the sick who are absent should be considered as present. He stated that he had indeed been truly ill, and yet he had been treated as absent. Therefore, he argued, since only one point was at issue, namely that he might be admitted to the distribution of charitable subsidies, he had been unjustly denied the distribution of the subsidy through competition and a violation of his legal rights.

Regarding the second point of the controversy, he contended that he had been unjustly erased from the Sodalitas. He cited Chapter VII of the constitutions, in which it is written: "No one can be expelled from the Sodalitas unless thirty confreres vote for it, of whom twenty must approve the expulsion; and also from Chapter XXXIV, which states: 'Whenever a resolution is to be accepted in the full assembly of the Sodalitas, it can only be considered a valid decree if at least twenty-five confreres are present.'" He asserted that nothing of this kind had been observed in his case. Indeed, not thirty or at least twenty-five, but only five out of ten members of the

Translated by churchlatin.ai, a product of Boyne Archives

Sodalitas had voted for his erasure. And furthermore, he...

[*Latin ed. p. 200*]

Twenty brothers, on the 20th of [month unspecified], affirmed that they considered the resolution of August 27, 1876, to be valid in all respects, and that if Z. were to be admitted again among the members, they would all withdraw from the association. This protestation has nothing in common with the resolution concerning secret ballots, which, unless accompanied by the solemnities prescribed by law to prevent the influence of age, will never be able to remedy the defects of the moral body from any other source. Finally, with great effort, the matter concerning Z. was addressed, so that the superiors of the fraternity, having before their eyes the faults that Z. had committed, would completely exclude him.

WHAT THE FRATERNITY MAINTAINED.

The fraternity, beginning its defense, invoked that principle of Ecclesiastical Law, namely, that controversies within a chapter or fraternity are to be resolved only through the means provided by the constitutions that define the moral body's proper law. Thus, Cardinal De Luca, in *Discourses on Judgments*, 25, no. 44, states: "First place in judging is occupied by that law which is mentioned above as being the last, namely, the particular law... which a subordinate entity possesses, and which comparatively represents a single person to the entire entity of the place... that proper and particular law prevails over a more general law." With these premises established, the fraternity maintained, in both cases, that the matter must be determined according to the constitutions of the Sodality in the subject matter.

Then, addressing the subject matter, the fraternity's orator first spoke of the endowed funds, stating that: "Indeed, the Holy Congregation, which the Most Holy Pope Innocent XII appointed to advise on the good governance and proper administration of the pious institutions of the city, expressly intended that these constitutions should adhere strictly to this principle," as reported by Bassi in *On Sodalities and Fraternities*, Question VII, no. 13: "The Holy Congregation ordered that the endowed funds, 'which the piety of the faithful has left to assist the poor,' be distributed to young girls 'in a just and impartial manner.'" In all matters concerning endowed funds,

[*Latin ed. p. 201*]

Concerning the distribution of endowments, whether these are administered collegially by a certain association, or individually by officials and deputies, whether they are derived from revenues exceeding expenses, or from any other assigned income, and whether they are to be used for the support of the poor or for the joining of couples in marriage, the inviolable

Translated by churchlatin.ai, a product of Boyne Archives

intention of the testators must be observed, and in all respects, those things which the constitutions of any pious institution prescribe in that matter must be followed, except only in those cases where the dispensation of the testators is required. Therefore, it was not permitted for the association to deviate in any way from the aforementioned constitutions, lest it violate this law; rather, it was strictly necessary to adhere to them. Moreover, in Chapter XXVII of the constitutions, the regulations concerning attendance were so carefully drafted that no doubt whatsoever could arise concerning the distribution of endowments. And with regard to the infirm brothers, it was expressly stipulated that they should not be considered present unless they were visited by the visitors of the infirm, or at least by the Superior General, and in his absence, by the first or second counselor, or unless they had requested, through one of the brothers, that they be visited, "because it may happen that unexpectedly, on a certain day, someone in the congregation may fall ill, and there may not be time to notify the moderators of the association, nor to provide medical assistance." It was not permitted in any way to deviate from this provision of the statutes of the association itself; for we are speaking of the rights of the brothers, which are either to be violated or diminished, contrary to the established laws, namely, in the final paragraphs of the section on agreements and in the section on regulations concerning legal rights, where it is prescribed that the right acquired by someone cannot be taken away against their will; nor should the Regulation 18 of the Chancery, which prohibits the taking away of the right of a third party, be violated. Indeed, the right acquired by the brothers who had reached the number of sixty points, to receive an endowment through a drawing, had been violated if another brother, who had only attained fifty-nine points, were admitted to the drawing; for the more numerous the group participating in the drawing, the less likely it is that any individual will obtain the prize, based on their merit.

[*Latin ed. p. 202*]

Reintegrationis 202. This was the legal argument. In fact, it was demonstrated repeatedly that the point had been granted to Brother Z. each time that the moderators of the fraternity were informed of his own infirmity. Therefore (it was concluded), there is absolutely no basis for granting Brother Z. the point that he requests. Regarding the second question concerning expulsion from the Sodalitas, the Orator argued against the application of Chapter XXXIV of the Constitutions, since Brother Z. had been dismissed according to Chapters VII and XXIX. Indeed, in Chapter VII, it is stated: "Whenever someone, having been corrected by the Governor and subjected to penalties, perseveres in contumacy, if, after a second and third warning, with greater penalties added each time, he still persists in his obstinacy, he shall, by this very fact, be dismissed." The application of this chapter was to be made in the

Translated by churchlatin.ai, a product of Boyne Archives

case of Brother Z.; for warnings and penalties had preceded the expulsion, and also the suspension of Brother Z., which almost all of the brothers solemnly approved in the general meeting of March 26, 1876. Moreover, his contumacy and obstinacy had progressed to such an extent that other members who were dedicated to the work of the Sodalitas offered supplications, spontaneously promising to grant Brother Z. the point, provided that he abstained from his functions. However, in Chapter XXIX, almost all the cases in which a brother is to be dismissed are applicable to Brother Z.; for he behaved both within the fraternity and outside of it in such a way that no one who abhorred quarrels and discord could live with him peacefully. Furthermore, it happened in the Sodalitas that it was almost impossible for any valid resolution to be reached, given the current number of brothers, if Chapter XXXIV were to be strictly adhered to. The vast majority, and undoubtedly the best part, of the entire fraternity voted against Brother Z. in the assembly of March 26, 1876, and almost unanimously ratified the suspensions that had been imposed on him up to that date. Although, on August 27, 1876, due to the departure of many brothers, the number of votes was not large, it was not lacking.

[*Latin ed. p. 203*]

203. Subsequently, the most complete wish of the entire confraternity for the firmness of the expulsion established in the aforementioned Congregation was expressed, so that it may fully be said: that, according to the articles 34 of the constitutions, Brother Z. was, by right and merit, expelled from the confraternity. For such is the equivalence, that the consent of all the brothers, which the constitution 34 desires to be present in the matters proposed, is fully considered in the subject matter. These and other debated points concerned the following question: Whether and how the appeals of Brother Z. concerning his exclusion from the distribution of dowry subsidies, and also his expulsion from the confraternity in this case, should be admitted.

RESOLUTION. The Sacred Congregation, in its plenary session on September 28, 1877, gave the following response: Negatively, in all matters.

FROM THIS, IT IS DEDUCED:

I. In all matters concerning the internal governance of any moral body, the ecclesiastical constitutions approved by authority constitute the proper law of that entity, according to which the questions are to be resolved.

II. When it is a question of controversies concerning the distribution of dowry subsidies, the provisions of the Sacred Congregation, established by the Most Holy Pope Innocent XI for the good governance and proper administration of the pious institutions of the City of Rome, must also be considered.

Translated by churchlatin.ai, a product of Boyne Archives

III. Although these provisions pertain only to the pious institutions of the city, it is permissible for them to be applied to all associations, provided that the laws that the constitutions of the pious institutions and the wills of testators prescribe are observed.

IV. Finally, greater weight must be given to the constitutions if a violation of the rights of a third party were to occur.

[*Latin ed. p. 204*]

204 V. Complaints regarding violations or abuses of constitutions cannot be admitted if the person against whom the complaint is made, having been able to do so by himself, desired to present it through others in order to proceed more safely.

VI. In certain cases, even if the matter concerns odious things, the fact may be proven by equivalent evidence, provided that the fact to be proven leaves no room for doubt.

EX 8. DECREE OF THE CONGREGATION OF THE INDEX. Tuesday, July 1, 1878. The Sacred Congregation of Eminent and Reverend Cardinals of the Holy Roman Church, by the Most Holy Lord our Pope Leo XIII and the Holy Apostolic See, having considered in the Apostolic Palace at the Vatican on July 1st, 1878, the works of books of corrupt doctrine for their proscription, expurgation, and permission, throughout the Christian Republic, condemns and condemns, proscribes and proscribes, or orders that the following works be referred to the Index of Prohibited Books, which are:

* Caverni Raffaello. *De' nuovi studi della Filosofia. Discorsi a un giovane studente.* Florence, 1877. The author commendably submitted and approved the work.

* Martig Emmanuel. *Manuel d'enseignement pour les écoles et les collèges.* Geneva, 1876. The same work under this title:

[*Latin ed. p. 205*]

The Decree concerning the *Manuel d'histoire religieuse* by Decretum, published in Geneva in 1877, for use in schools. The work is condemned according to II Kings, Index Trid., Soury Jules. *Jésus et les Evangiles*. Paris, Réveillaud Eug., a republican lawyer from Troyes, Protestant. Paris, editor-in-chief of *La question religieuse et la solution*, 1878. *La crise de l'Eglise*. Brussels, Imprimerie Van der Ghem, Leopold Street, 27. Straud William. *Christ*. London, The physical work is condemned in the Regulations. Verified fact: May 15, 1878. Given in Rome, on the day of Saint Anthony, in the year of Our Lord 1871. - In Latin: The physical cause of the death of Christ, Index Trid. Decree of the Holy Office, 1878. LUCA, Prefect. Saint Francis, Jerome Pius Saccheri, Order of Preachers, Secret Congregation. On July 31, 1878, I, the undersigned, Master Cursor, testify that the aforementioned Decree was affixed and published in the City. Philippus Ossani, Master

Translated by churchlatin.ai, a product of Boyne Archives

Cursor. On the second day of the week, July 29, 1878. Jesualdus (P.) from Bronte, Order of the Capuchins. Concerning the consecration of Christian marriage according to the New Law, in truth and in its proper essence. Second edition. Catanae, Sacrament, 1876. Decree of the Holy Office, July 17, 1878. The author commendably submitted the work, and it was approved. Lazzaretti David. Published, that is to say: All works, in any language.

[*Latin ed. p. 206*]

Decree 206 — Prophetic Rescripts; or, The Awakening of the Peoples, prayers, prophecies, judgments, and moral and familiar discourses dedicated to my Italian brethren. Arcidosso, 1870, Decree S. Off. Thursday, July 24, 1878. — Rules of the pious institute of penitential hermits. Montefiascone, printing house of the Seminary, 1871, Same Decree. — Notices and predictions of an unknown prophet. Prato, 1871. Same Decree. — Letter addressed to the Parish Priests. Arcidosso, printing house of Gorgoni, 1873. Same Decree. — Anonymous letter concerning prophetic events, addressed to all my brethren in Christ. Arcidosso, 1873. Same Decree. — Prophetic letters of Saint Francis of Paola concerning the great Monarch and the Order of the Holy Cross of Jesus Christ, letters to the Romans and the peoples of Italy, and to the Monarchs of Europe. Naples, notices to the judge. men. The leader and my struggle with the nations, and with God, that is, the book of the seven seals, description and nature of the seven eternal cities, Bourg, printing house of Villefranche. Same Decree. — *Le livre des fleurs célestes*. Lyon - Pitrat. Same Decree. — Manifesto to the Christian peoples and princes, followed by unpublished works by the same author, and some justificatory documents relating to his trial. Lyon - Pitrat. Same Decree. Therefore, no one of whatever rank and condition, wherever he may be, and whatever his language, may dare to publish, or after publication, to read or retain these works, but he shall be obliged to deliver them to the Ordinary of the place, or to the Inquisitors of heretical depravity, under the penalties indicated in the Index of Prohibited Books. These matters, which have been related to me, the undersigned, S. I. C., have been brought to the attention of His Holiness, Pope Leo XIII, and His Holiness.

[*Latin ed. p. 207*]

The aforementioned Decree was approved by His Decree, the faith, etc. 207, and He commanded it to be promulgated. Given in Rome on the 31st day of July, 1878.

Fr. THOMAS M. Card. MARTINELLI, Prefect of the L. © S.

Fr. Hieronymus Pius Saccheri, of the Order of Preachers, Secretary of the Congregation of the Secret.

On the 3rd day of August, 1878, I, the undersigned, Master of the Curia, testify that the aforementioned Decree was affixed and published in the

Translated by churchlatin.ai, a product of Boyne Archives

City.

Philippus Ossani, Master of the Curia.

FROM THE HOLY CONGREGATION OF RITES.

Concerning the obligations which arise for Religious after the reduction of feasts in GALLIA, enacted in the year 1802.

The present Calender of the Discalced Carmelites Province of Aquitania in GALLIA, considering the variety of opinions concerning the obligations which arise for Religious from the Indult of Cardinal [illegible] of April 9, 1802, concerning the reduction of feasts in GALLIA, humbly requests a solution to the following doubts from the Holy Congregation of Rites:

Doubt I. Whether Religious, who solemnly celebrate on the proper day the Feast of the Holy Apostles Peter and Paul, and the Feast of Saint Stephen the Protomartyr, as well as all the feasts of the Apostles,

[*Latin ed. p. 208*]

Question 208: According to the custom established by the Breviary, are commemorations to be observed, such as the Feast of All Apostles on June 29th, and the Feast of All Martyrs on December 26th?

Question II: Are Regular clergy, who celebrate with solemnity on their own feast days, namely the Feast of the Epiphany of the Lord, the Most Holy Body of Christ, the Feasts of the Holy Apostles Peter and Paul, and the Patronage of the Diocese or Place, obligated, as is the secular clergy, to chant the feasts in the Solemn Mass on the Sunday within the Octave when they occur?

Question III: Since all Carmelite churches of the first class observe the Feast of the Dedication of the Order on August 31st, under the octave, are they also obligated to celebrate the Dedication of all churches in France on the Sunday after the Octave of All Saints, under the rite of the first class, with the octave?

Question IV: Since the Feast of Saint Remigius, celebrated on October 1st, has been elevated to the rite of "duplex" for France, as they say, by a special Indult, the question arises as to whether this elevated office obliges the Regular clergy, and also those who, like the Carmelites, have a proper Calendar approved by the Congregation of Sacred Rites?

Furthermore, the Sacred Congregation of Rites, after hearing the opinion in writing of another of the Masters of the Apostolic Ceremonies, having carefully considered all matters, decided to respond as follows:

To I: Affirmative, according to the Indult of 1802.

To II and III: Affirmative, likewise according to the aforementioned.

To IV: Deferred. The concession mentioned in the question should be inquired into and examined.

Translated by churchlatin.ai, a product of Boyne Archives

And thus it was written and ordered to be observed.

January 4, 1877.

From Sabina.

Cardinal BILIO, Prefect of the Sacred Rites.

L. © S. Piae. Ralli, Secretary of the Sacred Rites.

[*Latin ed. p. 209*]

WARNING 209. REGARDING THE LETTERS OF POPE PIUS IX MENTIONED BELOW. Since it cannot be omitted due to its intrinsic merit, namely because the Archbishop of Paris wisely refutes Gallican doctrines, we present it here. However, we have deemed it necessary to note certain things, lest the memory of that Archbishop be burdened with any cause for offense, or lest any Roman Catholics be offended. Therefore, it should not be overlooked that he sent letters to the Supreme Pontiff, Pope Pius IX, on March 2, 1871, when Piedmontese troops had already invaded Rome, behaving like enemies, in which, among other things, the following is written: "I would be displeased if I did not take this opportunity, most Holy Father, to declare to you that I adhere purely and simply to the decree of July 18, 1870. Perhaps this declaration will seem superfluous after the note that I had the honor of submitting to Your Holiness on July 16, together with several of my colleagues; but it is sufficient that this is pleasing to you, as I am written, for me to do it with pleasure, especially in the circumstances in which you find yourselves..." (in Latin, it reads): "Indeed, most Holy Father, I would wish, if these letters did not offer the opportunity, to declare to You that I adhere purely and simply to the decree of July 18, 1870. This declaration may perhaps seem superfluous, after the note which I submitted to Your Holiness on July 16, together with several of my colleagues; but it is enough that, as I am assured in writing, this is pleasing to you, so that I may gladly accomplish it, especially on account of the circumstances which press upon You." To this, the Most Holy Father responded: "Your pure and simple adherence to the Dogmatic definitions of the Vatican Council is most pleasing to Us. On this day, the infallibility of the Roman Pontiff was solemnly declared in the Vatican Council. With this act, Gallicanism saw its final day. Acts, volume XI, page CXXV, 14.

[*Latin ed. p. 210*]

Warning 210 brought joy. And I believe that you, without delay, will present to the people of your faith whatever you yourself profess to believe." While the Archbishop Darboy was striving to fulfill the desires of the Supreme Pontiff, he was captured and imprisoned by the fierce Socialists of Paris. These, like wild beasts, stained with the blood of victims, inflicted extreme torture, both on the Archbishop and on other priests who were unfortunate companions in his misfortune, through murders and robberies.

Translated by churchlatin.ai, a product of Boyne Archives

These confessors, it is piously believed, adorned with the palm of martyrdom, displayed a generous spirit in bearing witness to the faith of Christ.

LETTERS from His Holiness Pope Pius IX to the Reverend Father Darboy, Archbishop of Paris.

TO THE VENERABLE BROTHER GEORGE, ARCHBISHOP OF PARIS, IN PARIS, on the 26th of October, 1865.

PIUS PP. IX.

VENERABLE BROTHER, GREETINGS AND APOSTOLIC BENEDICTION.

From the letter which We composed with Our own hand, on the 24th of the month of November, in the year immediately preceding, which We sent to you, Venerable Brother, you could easily recognize Our paternal benevolence towards you. Indeed, We hoped that those who are devoted to you would be moved by the feelings in their hearts, and that you would respond most diligently to Our love for you, and that you would readily comply with Our desires, and that you would clearly demonstrate your respect and devotion to Us and to this See of Peter, as is fitting for a Catholic prelate. And We hope this even more, because when you were appointed to this Parisian Archbishopric, you took care to bring us letters in which you declared yourself most devoted to Us and to this Apostolic See, and that you revered Us and the same See with the greatest reverence. Therefore, relying on this hope, in the aforementioned Our letter, We did not consider it necessary to mention your letters, dated on the first of the month of September, in the same preceding year, in which you replied to Our epistle.

[*Latin ed. p. 211*]

Letters 211, dated April 26th of the same year, were written to you concerning certain matters pertaining to your Diocese, and your letters have caused us both admiration and sorrow, for from them, beyond all expectation, we have understood that you hold opinions which are entirely contrary to the divine Primacy of the Roman Pontiff over the entire Church. And indeed, you do not hesitate to assert that the power of the Roman Pontiff is neither ordinary nor immediate over Episcopal dioceses. You believe that the Roman Pontiff can only exercise his authority over a foreign diocese when that diocese is so openly disordered and disturbed that the intervention of the Supreme Pontiff is the only remedy by which the salvation of souls and the negligence of pastors may be addressed. However, you do not seem to recognize the divine right, by which the Bishop is the sole judge in his own diocese, when the Supreme Pontiff involves himself in the affairs of the diocese outside of the aforementioned evident necessity.

Translated by churchlatin.ai, a product of Boyne Archives

And you believe that a canonically erected diocese, in which the hierarchy is established, can be turned into a mission region if the Roman Pontiff, outside of the aforementioned case, exercises his authority over the diocese. Furthermore, in the speech you gave to this Senate, you affirmed that appeals to this Apostolic See are an abuse, and you attack the right which each faithful possesses to appeal to the Supreme Pontiff, and you claim that this hinders and makes the administration of the diocese almost impossible. While you do not hesitate to manifest this doctrine, you clearly and openly declare in what ways you intend to maintain it. For you indicate that you intend to resist with all your might and to prevent the direct intervention of the Roman Pontiff outside of the often-repeated case of necessity, asserting that the actions of the Regulars, and of this Nunciature, and of the Roman Congregations are aimed at bringing about the direct intervention of the Supreme Pontiff in dioceses. And furthermore, you say that you wish to incite other Venerable brothers, the Sacred Ministers of France, to conspire with you, and then to appeal to the people with suitable instruction. In the same speech you gave before this Senate, you did not hesitate to propose various ways that are most contrary to the supreme authority of the Roman Pontiff and of this Apostolic See, namely, to retain Apostolic Letters, and to subject them to the judgment and decision of civil authority, and to appeal to secular power. In that speech, which was subsequently published by means of the printing press, you even spoke of organic articles, and you considered that they should be given authority and reverence, as if they corresponded to a pre-existing and more serious condition and necessity of the Society, although you are not unaware of how this Apostolic See has never failed to protest against such articles issued by secular power and contrary to the doctrine of the Catholic Church, and to its rights and liberties.

[*Latin ed. p. 212*]

Indeed, Venerable Brother, we could never have believed that you were animated by such sentiments, unless we had recognized them from your aforementioned letters, given to us last September, and from your aforementioned discourse, with the greatest sorrow of our mind. For we cannot but deeply grieve and be concerned, since, contrary to all our expectations and thoughts, it appears that you favor false and erroneous doctrines of Febronius, which, as you know, this Holy See has condemned and rejected, and which the most learned Catholic writers have refuted and discredited in their works. And you yourself, Venerable Brother, can easily understand how deeply we are affected, when we consider the sentiments that you express, which are contrary to Catholic doctrine, and from which, as the Patriarch of the Catholic Church, you ought most of all to abhor. And indeed, by asserting that the power of the Roman Pontiff in individual dioceses is not ordinary, but extraordinary, you propose a proposition entirely

Translated by churchlatin.ai, a product of Boyne Archives

contrary to the definition of the Fourth Lateran Council, in which these most clear and decretal words are found: "The Roman Church, by the will of the Lord, holds primacy over all the others in an ordinary manner, as the Mother of all the faithful of Christ, and the Teacher" (Conc. IV, cap. 5), that is, of all those who belong to the flock of Christ. These very grave words of the same Council should be most clearly known and understood by you, Venerable Brother. Nor can you fail to recognize that your same proposition is plainly contrary to the constant practice and doctrine of the Universal Catholic Church, and of all its bishops, who, with all due reverence, have received and transmitted it, according to which, both in the present and in past ages, the Church has always held and taught, and does hold and teach, those Divine words: "Feed my sheep, feed my lambs," which were spoken by the Blessed Prince of the Apostles by Christ the Lord, so that, by the force of those very words, all the faithful, Peter, and his successors as the Supreme and Ordinary of the whole Church, and as the chief priests of all the sacraments, are immediately subject to them, just as they themselves are subject to Christ the Lord, of whom the Roman Pontiff is the true Vicar on earth, and the head of the whole Church, and the Father and Doctor of all Christians. Moreover, we are not a little surprised that, perhaps even aware of it, you, from the aforementioned Febronian tenets, express sentiments that, according to that doctrine, would lead to the conversion of dioceses into missionary regions, and of bishops into Apostolic Vicars, when all know that it is as false to say that, in the civil order, Ordinary officials of provinces, prefects, judges, and other magistrates, cannot any longer be called Ordinary magistrates, because the King or Emperor possesses direct or immediate and ordinary power over those who are subject to him, as it is to say that the earth is not round. The Doctor Angelicus uses this very apt analogy when he says: "The Pope has the fullness of pontifical power, as a king in his kingdom; but the bishops are taken into part..."

[*Latin ed. p. 213*]

Letter 213: "with solicitude, as if judges appointed to each city" (St. Thomas, q. 26, art. 3). And indeed, We cannot but marvel that You, Venerable Brother, complain about the petitions and appeals that are brought before the Roman Pontiff, and which are received by him, since, as a Catholic Primate, You ought best to know that the right of appeal to the Apostolic See, as Our Predecessor, the immortal Pope Benedict XIV, indicated, "is so necessarily connected with the Primacy of the Roman Pontiff over the entire Church, that no one can bring this into question, unless he wishes to undermine this very foundation" (Benedict XIV, *De Synodo Dioec.*, book 4, chapter 5). This right is indeed known to all the faithful, as Our Predecessor, St. Gelasius, also wrote (Epistle VII, to the Bishops of Sardinia): "The Church knows all things through the authority of the Pontiff; for the See of the Blessed Apostle Peter has the right to

Translated by churchlatin.ai, a product of Boyne Archives

resolve matters, because it has the right to judge all things, and no one is permitted to judge its judgments; if anyone wishes to appeal to it from any part of the world, no one is permitted to appeal from it." Therefore, You cause astonishment when You state that the practice of this Apostolic See in receiving the complaints of those who appeal to it from the judgment of the Bishops makes the administration of Your diocese impossible. For such an impossibility has never been known to any Bishop of the Catholic Church, either in the present or in past ages. And if such an impossibility were ever asserted by You, the Roman Pontiff, who is burdened with the most serious concerns of all the Churches, ought to feel it, and is obligated to receive all the petitions of all the dioceses, and to examine and resolve them carefully; never the simple Bishop, who is only obligated to respond about the affairs of his own diocese, which is only a small part of the entire Catholic Church. And these complaints of Yours, against the right of appeal to the Roman Pontiff, and against the ordinary and direct jurisdiction of the same Pontiff over all dioceses, arouse even greater astonishment, because every Bishop of a religious mind perceives, through the same right and jurisdiction, as You Yourself know, Venerable Brother, the greatest solace, comfort, and strength before God and the Church, and even before the enemies of the Church. Indeed, before God: because, by excusing himself from the obligation to render an account of his actions, he is more and more directed by the salutary light of the Apostolic See to administer his diocese prosperously; before the Church: because through this, the Church is seen to flourish and grow stronger and more united in its governance; before the enemies of the Church: because in this way the Bishop becomes stronger and more steadfast against them. For all have proven and explored this.

[*Latin ed. p. 214*]

214 The letters which are sent to Bishops, not only ought to be weak, but also, at that time, become a greater source of ridicule for adversaries, when He [the Bishop] adheres less to that Immutable Rock upon which Christ the Lord built His Church, and against which the gates of hell shall never prevail. But you declare that you resist, and that you stir up other Bishops of Gaul, and appeal to the people; you see, therefore, that you are proceeding in a most seditious manner, contrary to what Febronius proposed against the Apostolic See, and that you gravely offend the Divine Author of the Church's constitution, and that you inflict a great injury both to your colleagues and to the Catholic people of Gaul. Indeed, speaking of the matter of the Regulars, you must know that we desire above all that the Regulars themselves have brought us nothing, whereas we know from elsewhere that the visitation was made by you yourselves. On this matter, which we have mentioned in our letters, dated April 26th, we lovingly warned you: and we wish to repeat that warning to you, without having

Translated by churchlatin.ai, a product of Boyne Archives

heard your side; and you say that this is contrary to the presumption of law, which you always consider to be valid when a controversy arises between a superior and an inferior, such as the Regulars, with respect to you. We can scarcely believe that this is said to you, Venerable Brother, since you are known to have the book of Decretals of Our Predecessors, and therefore you know that it has always been the custom of the Roman Pontiffs, that when they hear something from any Bishop that is less than proper, they should freely write to him, expressing their own displeasure. And many canons begin with those words: "Relatum... Querelam... Ad audientiam... Ad Nostram Audientiam... Ad aures... etc." Neither have the Bishops ever received such letters from the Roman Pontiffs as judgments, issued without hearing the other side, nor have they ever been offended; but they have always understood those letters in the sense in which they were written, namely, as invitations, either to confirm what they have done, or to acknowledge a fault, and to make amends for it. A different method of acting would render the government of the whole Church too difficult for the Vicar of Christ on earth, and would not be in accordance with Episcopal meekness. We are saddened, Venerable Brother, that you have fallen into several ambiguities regarding the matter of the Regulars. For, according to your prudence, we wish you to first seriously consider that here we are speaking of an Episcopal visitation, made to the Religious of the Society of Jesus, and to the men of the Franciscan Order of Capuchins, who for many years have resided in this city of Paris, and under various Archbishops, your predecessors, and who have enjoyed the peaceful possession of their exemption; and therefore, the Apostolic See also exercised its own special or private jurisdiction over them. Therefore, it is a matter of spoliation, by a deed carried out against the possession which the Apostolic See and the Regulars held. Hence, it is true.

[*Latin ed. p. 215*]

Letter 215 concerning the state of affairs, from which it is easily apparent that the Apostolic See has acted justly, even if you were to twist the words with which we sought to advise you into a judgment and a condemnation. Indeed, Venerable Brother, although you possess ample reasons, you do not fail to understand, according to the prescriptions of both laws, that no one can be deprived of possession. Therefore, before you despoiled the Regulars and the Apostolic See of their rightful possessions and rights, it was your duty, both for the sake of reverence and of justice, to inform the same See of your reasons, and to await a response from that See. And the Apostolic See has acted most justly, since you know very well that there is a clear distinction between a petitionary judgment and a possessory judgment, and that each law establishes specific rules regarding the judgments concerning the spoliation and usurpation of property by others. We earnestly hope, Venerable Brother, that you will carefully consider and

Translated by churchlatin.ai, a product of Boyne Archives

understand this, according to your prudence. You seem to believe that the Apostolic See should always stand on the side of the superior party, by right of presumption, when a question is raised between parties of unequal standing, and you propose a rule to it that is very different from the one that Saint Bernard proposed to Innocent II, your predecessor, with these words: "This, among other things, is a special mark of your singular primacy, which makes your Apostleship more noble and renowned, if you snatch the poor from the hands of the stronger" (St. Bernard, Epistles 198). But you contend that religious families, residing in Paris, cannot enjoy the rights of exemption, because, as it seems to you, they are not canonically established for three reasons. First, because the laws of that state do not grant Regulars a legitimate existence; second, because those same laws do not allow Regular houses to possess property or dominion, so that it is impossible to enforce what the Apostolic Constitutions command, which prescribe that before any foundation, it must be completely established how they can properly sustain themselves; and finally, because the Council of Trent and the Constitutions of the Roman Pontiffs require the consent of the Bishop for the canonical existence of Regulars in dioceses, which you assert has never been granted to the Regulars about whom we are speaking. And you also assert that a previous existence in no way can make the canonical status of those same Regulars valid: not by the implied title of approval, since the Pontifical Constitutions and the Council of Trent require, as you believe, that such consent from the Bishop, and its authority, be expressly and in writing given, before the arrival of the Regulars; not by the title of prescription, because you say that we are dealing with a law that is null and void, and with a law of public order, which, as you believe, does not admit of prescription. But we do not doubt that you yourself, Venerable Brother, know that such arguments have absolutely no validity, and that, given your intelligence, you will seriously consider what we are about to say, and that you will carefully consider everything.

[*Latin ed. p. 216*]

216 Letters. And indeed, with regard to the legal status which denies and prohibits the legitimate or civil existence of religious houses, and prevents them from acquiring any property or dominion, and thus hinders the fulfillment of the condition imposed by the canonical laws for the very foundation of such houses, namely, that it be ascertained how they maintain themselves with decency: what value can such civil laws ever have in relation to the administration and governance of ecclesiastical rights? It is not hidden from you that these civil laws, especially in these most turbulent, miserable, and utterly destructive times of rebellion, can even deny to bishops and any other ecclesiastical institution their legitimate or civil existence, just as they unjustly deny to them the ownership and dominion of every possession. Therefore, can the canonical existence and their own

Translated by churchlatin.ai, a product of Boyne Archives

ecclesiastical rights ever be denied to them? You know well that the practice of evangelical counsels, which is most necessary for attaining Christian perfection, can be best achieved in religious families. Can civil laws hinder the practice of Christian perfection, and must bishops be obliged to attribute canonical force to such laws? Indeed, all, and especially bishops, recognize that the manner in which the Church, and especially this Apostolic See, the Mistress of all Churches, has always acted concerning such laws that are hostile and contrary to the regular canons. Therefore, could a bishop depart from this tradition, and abandon the place he holds in the Church, by enacting such laws and attributing any effect to them before the Church? These considerations clearly show how futile is the opposition sought through such civil laws. But that these laws unjustly decree that religious houses can possess nothing by right of ownership, and therefore the condition prescribed by the sacred canons for the foundation of religious houses cannot be fulfilled, namely, that it be ascertained of their decent maintenance, if you, Venerable Brother, should examine the spirit and the letter of these canons thoroughly and accurately, you will certainly see that you are mistaken and deceived. For what do the canons demand by prescribing that condition? They demand and intend nothing other than the good of the religious, both individually and with regard to the proper governance and administration of each religious family. And therefore, when it is utterly impossible for them to fulfill that condition, could it be turned to their detriment, when it is established for their own good? You are well aware of the rules of both the canons (Cap. Quod ob gratiam de Reg. iuris, 6), and also of the civil laws (Leg. null. 25 ff. de legit.): "No rule of law, nor the benignity of equity, allows that what is introduced for the benefit of men should be produced with a harsher interpretation, contrary to their own advantage." But if you examine the words of the canons, do they themselves prescribe that...

[*Latin ed. p. 217*]

Letters 217: Regular canons are maintained and sustained solely by the possessions of their domain, as it seems to you? Certainly not. These canons are: the Constitution "Cum alias" of our predecessor Gregory XV, published on August 17, 1622; the Constitution "Cum saepe" of our predecessor Urban VIII, also published on June 21, 1625; and the Constitution "Nuper" of our predecessor Innocent XII, also published on December 23, 1697. It will suffice to present the most recent one, which encompasses the other two. Therefore, this Constitution states: "Henceforth, no monastery of regular canons, no 'house,' etc., shall be received anywhere except in places where at least twelve religious can reside and be adequately sustained by revenues and customary alms, after necessary deductions." Thus, the canons do not speak solely of possessions, but generally of revenues and alms. But now we must speak of another condition, namely, the Epis-

Translated by churchlatin.ai, a product of Boyne Archives

copal permission and consent which the Council of Trent and Pontifical Constitutions require for the existence of a regular canon house. Certainly, Venerable Brother, no one can doubt the necessity of this Episcopal consent, but in the present matter, it must be determined whether such consent has been sufficiently obtained. And after carefully examining all matters, how can it ever be denied that such consent existed? And indeed, let us omit the rest, Venerable Brother, everyone knows that the aforementioned religious, both of the Franciscan Order and of the Society of Jesus, have for many years been present in this place under various Parisian prelates who preceded you, who have gladly used the services of these regular canons for the care of souls and for all the duties of the sacred ministry, and who have treated these same regular canons with all signs of benevolence and honor. The conduct of your predecessors towards these regular canons clearly shows that a sufficient expression of canonical consent was given, and that it cannot be denied, which would inflict the greatest injustice upon your predecessors themselves. Furthermore, it is well known that Fagnanus, an author equal to and even later than Urban VIII and other Roman Pontiffs who preceded you, and who wrote with great knowledge of these canonical constitutions, notes in the final gloss of chapter 2 on monks that it is sufficient for the Bishop's consent to be given after the erection, because by confirmation he can confirm and consent there, as Hugo, the Archdeacon, and others state. And indeed, it cannot be otherwise, since justice demands it, and as jurists say, deeds are more powerful than words. Therefore, for your wisdom, you understand that the objection drawn from Urban VIII's Constitution has no weight, namely, that the Ordinary's permission must be expressly given and not implied or presumed.

[*Latin ed. p. 218*]

218 The letters, as you seem to believe, are not sufficient, because what is expressed in them is no less than what is expressed by certain, evident, and continuously repeated facts over a long series of years, than what is expressed in words, even in writing. And even less valid is the other objection, namely, that this Episcopal permission must be enough in writing, because not only are actions more powerful than words and writings, but also because no Canonical Constitution establishes this condition of writing. It cannot be argued, based on the Council of Trent, that the consent of the Ordinary must precede. For it is certainly not unknown to you that the proper, natural, and legal effect of any ratification that arises from subsequent actions is to remedy the defect of that action which should have properly preceded. However, what you say about prescription is irrelevant to the present question, since no one intends or wishes to exclude the consent of the Ordinary by prescription, but rather it is said that such consent, given by so many facts and over a long series of years, exists beyond all doubt and in a sufficient manner, and not only cannot be denied, but must

Translated by churchlatin.ai, a product of Boyne Archives

be considered certain, and that it has existed in the best possible form. Now, while we believe it is necessary to carefully consider your letters, especially those sent to us on the seventh of September, we cannot help but also communicate to you something of no small importance. For we cannot conceal, Venerable Brother, that we were greatly distressed and astonished when we learned that you attended the funeral of both Masters of the Great Militia, Magnan and Solemn Absultion, while Masonic emblems were still present on the coffin, and members of that damned sect were present at the same funeral, with the same emblems. In your letters, written to us on the first of last August, you assert that you and your priests did not see those emblems, nor did you know of them in any way. But, Venerable Brother, you surely knew that the deceased man, while he lived, miserably held the office of "Grand Orient" of that same sect; and therefore it was easily foreseeable that members of that sect would attend his funeral and would also take care to display the emblems of their sect. Therefore, for the sake of your reputation, everything should have been carefully considered by you, and you should have avoided those funeral rites altogether, lest your presence and actions arouse the very great astonishment and offense with which all Catholics are justly affected. Indeed, you are not unaware of how Masonic and other societies of this kind have been condemned by the Roman Pontiffs, our predecessors, and by ourselves (Clemens XI, Constitution "In eminenti"; Benedict XIV, "Provideas"; Pius VII, "Ecclesiam"; Leo XII, "Quo graviora"; our Encyclical Letter, of November 9, 1846, and elsewhere). For such impious sects, although they may be called by different names, are nevertheless the most nefarious and wicked.

[*Latin ed. p. 219*]

Letters 219, bound together by a conspiracy, inflamed with the most vile hatred against our Holy Religion and this Apostolic See, corrupt all morals and minds, seeking to destroy all notions of honesty, virtue, truth, and justice, and to spread monstrous opinions everywhere, and to foster abominable vices and infamous crimes, to undermine the authority of every legitimate power, and, if it were ever possible, to utterly destroy the Catholic Church and civil society, and to cast God Himself down from Heaven. Now, we cannot pass over in silence the erroneous and pernicious opinion that has reached our ears, namely, that the acts of this Apostolic See are subject to no obligation, unless the acts of civil authority have given their consent, and execution has been ordered. How erroneous and injurious this is to the authority of the Church and the Apostolic See, and how detrimental to the spiritual welfare of the faithful, is clear to all. For the supreme authority of the Church and of this See can never be subject to the power and will of civil authority in all matters pertaining to ecclesiastical affairs and the spiritual governance of souls; and all those who glory in the Catholic name are absolutely bound to obey the Church and this Apostolic

Translated by churchlatin.ai, a product of Boyne Archives

See with the utmost reverence and devotion. And here we must point out that you, in the aforementioned speech delivered before that Senate, falsely asserted that our predecessor of blessed memory, Benedict XIV, granted to the King of Sardinia the right of royal execution concerning pontifical acts, when you affirmed that in the instructions annexed to that convention, it is said: "Pontifical constitutions pertaining to discipline are to be submitted to the recognition of that Senate, and they require royal execution in order to have binding force, except for constitutions and Apostolic Letters which pertain to dogma and morals." This false assertion could never have escaped your lips, Venerable Brother, if you had carefully considered the words of that same instruction. And indeed, in Article III of that instruction, the following words are read: "In the concordat of Pope Benedict (XIII), the matter concerned the execution of Apostolic briefs and bulls, as can be read in the same concordat. Simple review was tolerated, without any decree regarding the execution of the aforementioned bulls and briefs; and it is known that everything was faithfully carried out. And although it is asserted with all sincerity, and it is believed, that neither the Senate, nor any other tribunal, has taken cognizance of the justice or alleged injustice of the bulls or briefs issued..."

[*Latin ed. p. 220*]

Letters 220: "Nevertheless, it must be understood that everything must always proceed with perfect harmony; and if any difficulty contrary to the execution of the Bull or Brief were to arise, and the Ministers of His Majesty wished to know the reasons, they must inform either the Minister of the Holy See residing in Turin, or the Apostolic Ministers residing in Rome. Simple perusal shall be excepted in the case of dogmatic Bulls concerning matters of faith, Bulls and Briefs regulating good living and holy customs, Bulls concerning Jubilees and Indulgences, Briefs of the Sacred Penitentiary, and letters of the Sacred Congregations of Rome, which are written to Ordinaries or other persons for information."

"And such arrangements concerning the dispensation of Royal execution have never been altered in subsequent Conventions between this Apostolic See and the King of Sardinia, and in the Convention recently concluded by our Predecessor Gregory XVI with the late King Charles Albert of Sardinia concerning personal immunity, and the preceding Conventions have been fully revived, in all those matters in which they had not been derogated by that same Convention. But know this, Venerable Brother, that We have been obliged to manifest all these things for the sake of the Supreme Office of Our Apostolic Ministry and for Our Pontifical affection for You; and We are confident that You will gladly receive these most loving admonitions and documents, and will diligently observe them, and firmly adhere to them, and vigorously defend the doctrine and laws of the Catholic Church, and will show due devotion and obedience to this Apostolic See and the Vicar

Translated by churchlatin.ai, a product of Boyne Archives

of Christ on earth."

"An agreement was reached with Benedict XIII concerning the execution of Apostolic Bulls and Briefs, as is stated in that same agreement. Simple perusal was tolerated, so that no mark could be added, or decree made concerning the execution of the aforementioned Bulls and Briefs, and it was understood that everything had been faithfully fulfilled. Although it is asserted and believed that neither the Senate nor any other Tribunal, at the request of anyone, has inquired into the justice or alleged injustice of the Bulls and Briefs; nevertheless, since everything should proceed gently, if ever a difficulty arose contrary to the execution of the Bulls and Briefs, and the causes were to be known, the Ministers of His Majesty, with suitable preliminary indications, must inform either the Minister of the Holy See residing in Turin, or the Apostolic Ministers residing in Rome. Simple perusal is excepted in the case of dogmatic Bulls concerning matters of faith, Bulls and Briefs which regulate good living and holy customs, Bulls concerning Jubilees and Indulgences, Briefs of the Sacred Penitentiary, and letters of the Sacred Congregations of Rome, which are written to Ordinaries or other persons for information."

[*Latin ed. p. 221*]

Letters 221: To all, we urge you to strive daily to fulfill all the duties of a good pastor, especially in these times of such injustice. Furthermore, be assured that you are held in high esteem and honor by Us, and that you are greatly loved by Us, and We desire that you be a witness to Our special benevolence towards you, and a harbinger of all Heavenly Graces. We impart the Apostolic Blessing, which with all the affection of Our heart, We lovingly grant to you, Venerable Brother, and to your flock. Given in Rome, at St. Peter's, on the 26th of October, in the twentieth year of Our Pontificate. PIUS PP. I X.

FROM THE CONSISTORY ACTS: Nominations of bishops and descriptions of the churches to which they are appointed. July 15, 1878. The Most Holy Father, in the Consistory held, proposed the following churches. On July 15, 1878:

1. CATHEDRAL CHURCHES OF NEPESIN and SUTRIN, perpetually and canonically united, vacant due to the translation of the Reverend Father John Baptist Paolucci to the Archiepiscopal Church of Hadrianople, in the territories of the infidels; The Most Holy Father promoted the Reverend Father Joseph Mary Costantini, born of legitimate, Catholic, and honorable parents from Aquipendium, and having surpassed the forty-fourth year of his age, to the aforementioned churches. In Rome, among the students of the Pontifical Seminary of Pius, where he was also Vice-Rector emeritus, co-opted, and having previously received a doctorate in sacred theology, on which he publicly debated before the Blessed Pope Pius IX, and having been awarded a doctoral degree in both Canon and Civil Law.

Translated by churchlatin.ai, a product of Boyne Archives

2. CATHEDRAL CHURCH OF IPPOREGIEN, vacant due to the death of the Most Reverend Aloysius Moreno, the last bishop of that diocese, who died outside the Roman Curia; The Most Holy Father appointed the Reverend Father David Riccardi to the aforementioned church.

(Note: Other nominations from the same day are already mentioned in the previous section, page 161 and following.)

[*Latin ed. p. 222*]

From the Consistorial Acts, a man named Francis, born in Biella to legitimate, Catholic, and noble parents, having surpassed the forty-fourth year of his age. He received Holy Orders, and previously, he was awarded a doctorate in sacred theology, and in both civil and canon law. The city of Eporedia, or Eporredia, a city of the Salassian people in the Alpine region, situated near the river Duria, extending along a long ridge and located in the province of Turin, has a circumference of approximately one mile, and is inhabited by over ten thousand citizens. Its Cathedral Church boasts the title of the Assumption of the Blessed Virgin Mary, and it is a fine and elegant building, serving as a suffragan to the Archbishop of Turin. Its Chapter consists of five dignitaries, of whom the first, after the pontifical official, is the Archdeacon, followed by thirteen Canons, including a theologian and a penitentiary, as well as other priests and clerics dedicated to the service of the divine. The care of souls in the Cathedral is exercised through the Canonry.

The Cathedral Church of Bellovacensis was vacant, due to the death of the Most Reverend Joseph Armand Gignoux, the last bishop, who died outside the Roman curia; the Most Holy Father promoted the Reverend Francis Edward Hasley to the aforementioned Church, a man born to legitimate, Catholic, and honorable parents in the town commonly called Sainte Mère Eglise, in the diocese of Coutances, having surpassed the fifty-third year of his age. He had previously received Holy Orders and has commendably served in ecclesiastical functions. Formerly chosen by the late Archbishop of Rouen, he obtained a canonry in the metropolitan church, and until now, he had been the parish priest of Saint Audon in the city of Rouen. The city of Bellovacensis, and the capital of the province of Oesiae in France, is situated in a beautiful plain under the open sky, and contains approximately fifteen thousand citizens, almost all of whom are Catholics, and are under temporary French rule. The Cathedral Church, whose structure is not yet complete, boasts the title of Saint Peter, the Prince of the Apostles, and it exhibits the Gothic style, is sufficiently large and fitting, and serves as a suffragan to the Archbishop of Rheims. Its Chapter consists of eight Canons, including a theologian and a penitentiary, and two prebendary Canons, to whom seminary students are sometimes added on more solemn days, for the divine service. The care of souls in the Cathedral is exercised by the Archpriest, assisted by four vicars.

Translated by churchlatin.ai, a product of Boyne Archives

The Cathedral Church of Bayonne was vacant, due to the voluntary resignation of the Reverend Father Francis Lacroix, who gladly relinquished it to the Most Holy Father, and was accepted by the same. The Most Holy Father then...

[*Latin ed. p. 223*]

From the Consistorial Acts, 223, the nomination of the most illustrious Man, Maurice de Mac-Mahon, Duke of Magenta, President of the Republic of Gallia, brought forth the newly appointed Reverend Arthur Xavier Ducellier, born of legitimate, Catholic, and honorable parents in the place commonly called Soliers, in the diocese of Baiocensis, and established in the forty-sixth year of his age. The Episcopal Curia of Baiocensis, and formerly its Secretary, has now renounced his position as General Vicar in spiritual matters for that city and diocese. Bayonne, a city in Gallia, in Aquitania and in the province of the lower Pyrenees, situated on the Adour River, where it flows into the Ocean after receiving the Nive, is large, rich, and well-fortified, enjoys a favorable climate, and is inhabited by approximately twenty thousand people under temporary Gallic dominion. The Cathedral Church, sufficiently large and of Gothic structure, boasts the title of the Blessed Virgin Mary, assumed into Heaven, and serves as a suffragan to the Archbishop of Aux. Its Chapter consists of eight canons, including a theologian and a penitentiary, to whom four prebendaries and, on solemn days, also seminary students are added for divine service.

The CATHEDRAL CHURCH of Spira is vacant, due to the death of the Reverend Monsignor Daniel Boniface de Haneberg, the last Bishop of that see, who died outside of Rome. The Most Holy Father, by the power of the Apostolic Indult, promoted to the aforementioned Church, the Reverend Joseph George Ehrler, born of legitimate, Catholic, and honorable parents in the town of Miltenberg, in the diocese of Herbipolis, and having surpassed the age of forty-five. Having been sent by the Bishop of Herbipolis to places within his diocese infested by heretics, he served for many years as a preacher in the metropolitan Church of Munich, and continues to do so at present. Spira is a city in Bavaria and the capital of the province of Palatinate Superior, situated on the banks of the Rhine River, and is inhabited by more than twelve thousand people, of whom the greater part profess the Catholic religion. The Cathedral Church, adorned with paintings and recently restored, is of remarkable size and Byzantine structure, and boasts the title of the Assumption of the Blessed Virgin Mary, and of the holy martyrs Stephen and Stephen, Pope, and serves as a suffragan to the Archbishop of Bamberg.

The CATHEDRAL CHURCH of Zamoran, in the Mexican territory of America, is vacant, due to the death of the Reverend Monsignor Joseph Anthony de la Peña and Navarro, the last Bishop of that see, who died outside of Rome. The Most Holy Father promoted to the aforementioned

Translated by churchlatin.ai, a product of Boyne Archives

Church, the Reverend Joseph Mary Cazares and Martínez, established in the forty-sixth year of his age. Having received the sacred order of the priesthood and, some time ago, the doctoral degree in Canon Law, he had previously renounced his position as Canon Portionary of the Metropolitan Church of Mechoacan.

[*Latin ed. p. 224*]

224 From the Consistorial Acts of Zamora, also known as Sentica, a city in the province of Mechoacan, within the territory of Mexico in North America, situated on the Zamorense River, it enjoys a favorable climate and comprises approximately twelve thousand Catholic inhabitants. The Cathedral Church of the Immaculate Conception of the Most Blessed Virgin Mary, and dedicated to Saint Martin of Tours, boasts a solid structure and serves as a suffragan to the Archbishop of Mechoacan. Its Chapter, which should consist of seven Canons and six Beneficiaries, currently numbers only four Canons due to a shortage of priests, along with three Chaplains or Beneficiaries, a Master of Ceremonies, and an Archdeacon, who holds the highest dignity after the pontifical office; seminarians assist in the divine services on festive days. The care of souls in the Cathedral is exercised by the Parish Priest.

The CATHEDRAL CHURCH OF THE HOLY CROSS OF LA SIERRA, located in the territory of Bolivia in South America, is vacant due to the death of the former Bishop, the Most Reverend Father Francis Xavier Rodriguez, who passed away outside of Rome. The Holy See has appointed the Right Reverend Father John Joseph Baldivia, who has surpassed his forty-seventh year, to the aforementioned Church. After having performed various ecclesiastical and civil duties, and having served as one of the Synodal Examiners, he resigned from his position as General Vicar for spiritual matters in the diocese of Pacis, and subsequently from his position as Cathedral Canon Doctor.

The town of San Cruz de Monte, or San Cruz de la Sierra, the capital of the homonymous province, is a city in the territory of Bolivia in South America, built at the foot of the mountain, and is inhabited by approximately ten thousand citizens. The Cathedral Church, of ample size and with a modern structure, is dedicated to the Holy Cross of the Lord Jesus Christ, and serves as a suffragan to the Archbishop of Plata. Its Chapter consists of four Canons, including a theologian and a penitentiary, and also includes two dignitaries, the first of which, after the pontifical office, is the Dean, along with two Prebends, other priests, and clerics who serve in the divine services. The care of souls in the Cathedral is exercised by the Parish Priest.

The EPISCOPAL CHURCH OF VARÍEN, under the Archbishop of Damasceno, in a territory among the infidels, is vacant due to the transfer of the Right Reverend Father Paul Goethals from the Episcopal Church

Translated by churchlatin.ai, a product of Boyne Archives

of Hierapolis, also in a territory among the infidels; the Holy See has appointed him to the aforementioned Church, and, considering his advanced age and other circumstances, the Right Reverend Father Louis Charles Feron, Bishop of Clermont, has been appointed as his Coadjutor with the expectation of succeeding him. In addition, this illustrious man, the Duke of Magenta of France, has...

[*Latin ed. p. 225*]

From the Consistorial Acts, number 225, at the request of the President of the Republic, and with the expressed consent of the Bishop of Clermont, the Reverend Father John Peter Boyer, in the forty-ninth year of his age, was appointed. He had been serving as a parochial vicar in the diocese of Autun and in the city of Acqui, and had been chosen by the Secretaries of the Bishop of Acqui; previously, he had been Dean and Professor of Dogmatic Theology in the theological faculty at Acqui. The city of Byblos, in Phoenicia, is still held by the infidels; therefore, the miserable state of its inhabitants passes in silence. Clermont, on the other hand, is a city in France, in the province commonly called the Auvergne, situated on a hill at the foot of the mountains, and contains approximately forty thousand inhabitants, under temporary French government. The Cathedral Church boasts the title of the Most Blessed Virgin Mary, and presents a Gothic structure, and is a suffragan of the Archbishop of Bourges. Its Chapter consists of nine canons, without a theologian or penitentiary, to whom other priests and clerics are assigned for divine service. The care of souls in the Cathedral is exercised by the Canon-Archpriest.

THE EPISCOPAL CHURCH OF HERMOPOLIS, under the Archbishop of Damietta, in the parts held by the infidels, became vacant through the death of the Most Reverend Augustine Franco, the last Bishop of that see, who died outside the Roman curia; to this same Church, the Most Reverend appointed the Reverend Father Charles Francis Bonaventure Theuret, born of legitimate, Catholic, and honorable parents in the place commonly called Vars, in the archdiocese of Besançon, and having surpassed his fiftieth year. He was formerly Prior of Alms in the Principality of Monaco, serving as Palace Curate there, Canon of the honorary position in the Cathedral of Nice, and General Vicar in spiritual matters for the diocese of Vintimille. Among the SANCTITY'S domestic Prelates, Referendaries with the insignia of justice, and Apostolic Protonotaries, he was also recently appointed Apostolic Administrator of the Abbey of Nullius. The city of Hermopolis, in Egypt, located on the Nile River between Cynopolis and Antinoum, is still held by the infidels; therefore, the miserable state of its inhabitants passes in silence.

Subsequently, the following Churches were established, provided for by an Apostolic Brief:

THE EPISCOPAL CHURCH OF AVARAN, in the parts held by the infi-

Translated by churchlatin.ai, a product of Boyne Archives

dels, was granted to the Reverend Father William Henry Eider, transferred from Natchez, and appointed as Coadjutor with future succession. R. Acta, volume XI, page CXXV, 15.

[*Latin ed. p. 226*]

From the Consistorial Acts, 226: To the Most Reverend Joseph Sadoc Alemany, Archbishop of the Cathedral of Saint Francis in Galveston, in California, the Church was granted to the Reverend Father Peter Dufal, Bishop of New Orleans, and of Delcon, and appointed as Coadjutor with succession to the Most Reverend Claude Marie Dubuis, Bishop of that Cathedral. To the Episcopal Church of Canea, the Reverend Father John Seghers was granted the Church, transferred from Vancouver, and appointed as Coadjutor with succession to the Most Reverend Francis Norbert Blanchet, Archbishop of Oregon City. To the Cathedral Church of Herrien, the Reverend Father Daniel McCarthy, Vice Rector of the College of Maynoot, was granted the Church. To the Cathedral Church of Chicoutimi, in Canada, in the province of Quebec, the Reverend Father Dominic Racine was granted the Church. To the Episcopal Church of Mellipotam, in a mission territory, the Reverend Father Anthony Butler of the Society of Jesus, was granted the Church, and appointed Apostolic Vicar of British Guiana. To the Episcopal Church of the Reverend Father Peter Foucard of Paris, the Society was granted the Church, transferred from Zelan, in a mission territory, and appointed as Prefect of the Apostolic Mission of Kiangsi in China. To the Episcopal Church of Tremiten, in a mission territory, the Reverend Father Ferdinand Hamen of the Congregation of the Immaculate Heart of Mary, was granted the Church, and appointed Apostolic Vicar of Kansou in China. To the Episcopal Church of the Reverend Father Felix Biet of Dianen, in a mission territory, the Society of the Missions of Paris was granted the Church, and appointed Apostolic Vicar of Tibet. Furthermore, Cardinal Pietro requested the pallium for the Church of Ostia.

[*Latin ed. p. 227*]

FROM THE HOLY CONGREGATION OF THE COUNCIL OF MATRIMONY. March 23, 1878. Summary of the case. Pantaleon. C. Having publicly announced his intention to marry a young woman of his choice, he had already decided to enter into marriage with her. This undertaking was hindered by Gabriela C., who presented an impediment to the marriage, along with the fact of defloration and the subsequent conception of a child. The Episcopal Tribunal, on November 16, 1875, rendered an unfavorable judgment against the woman, after having carefully considered the matter; because the synodal law had been violated. This synodal law, concerning the proper commencement of marriage, stipulates: 1. ”That it be done before two witnesses and a public notary, or before some person of constituted authority, such as a Parish Priest, Priest, or Magistrate.” 2. ”That the promise

Translated by churchlatin.ai, a product of Boyne Archives

and the counter-promise be put in writing and signed by the witnesses and by those present." "Those who refuse to comply with this mandate will be subject to the penalties of being forbidden from entering the Church, and to the imposition of a greater sentence of excommunication. Indeed, if we judge it to be for the common good or for the good of the family, we will dissolve such marriages, even if they have been illicitly contracted, by our authority." The Archbishop, before whom Gabriela appealed, after examining the matter, considered the aforementioned judgment to be approvable, to be maintained, and to be confirmed. The young woman, not discouraged by her adverse fortune, appealed against both judgments to the Holy See.

[*Latin ed. p. 228*]

§ 228. A Synopsis of the Discussion Concerning Marriage.

I. WHAT APPEARS TO BENEFIT THE WOMAN.

From the text in Book I, concerning the bride, and from canon 1, cause 30, question 5, it can be gathered that the essence of betrothal is the mutual promise of the future marriage; and that contracts are included among those perfected by mere consent (L. 4, ff. 55, de sponsa). However, if the testimonies of the witnesses are carefully examined, there are weighty arguments and conjectures from which the consent appears to have arisen. It is reported that, after the birth, the woman urged the man to fulfill his promises; that the man was aware of the obligation he had to Gabriel in his conscience, and that he was asked by her whether she desired garments and gold for the betrothal. From these facts, clear indications are derived that a promise and a reaffirmation of the promise of the future marriage existed between the two parties. To these, it must be added that the man so desired Gabriel that, for nine years, he publicly demonstrated his desire to take the girl as his wife; a fact that is affirmed by all the witnesses, even those presented by the opposing party. Therefore, if Pantaleon already revealed his intention to take the girl as his wife, and if there is no doubt about the affections he had for her, it seems that his intention was manifested to the woman, and that it was accepted by her. This conclusion is favored by the defloration with its acceptance. Indeed, it is established by law that consent can be shown not only by words, but also by signs and gestures, and even by the actions of the parties (Devoti inst., canon. 5, § 10, de Matrim.). But no action can more clearly demonstrate consent than the defloration, provided that the woman's chastity is otherwise established. For it cannot be presumed that a girl, otherwise chaste, would willingly suffer such a loss of honor without hope and confidence of marriage (Reiff, in ius Canon., lib. 4, § 5, n. 68). There is no ambiguity concerning the girl; the witnesses on both sides will testify to this. Because they are led by her

Translated by churchlatin.ai, a product of Boyne Archives

chastity, they...

[*Latin ed. p. 229*]

Concerning matters that appear to benefit the man: It is noted that the girl is considered to be at the threshold of the matter of betrothal. The question is: The cause, before the advocates of both parties, having been judged by two sentences, if any other exception is raised, it passes to a different level of jurisdiction, and therefore the exception is so framed that the litigation is concluded, so that it cannot be recalled unless, prior restoration in integrum is requested and obtained. However, the advocate, examining the merits of the cause, observes that betrothal carries with it an indissoluble bond of marriage, and deprives each of their natural freedom; therefore, greater proofs are required of the promise of each contracting party, so that, if any doubt remains, judgment should be rendered against their existence. But if you hear the depositions of witnesses who were induced by the woman, not a single word is mentioned of the promise and the reaffirmation of marriage; and therefore, it must be concluded that betrothal does not exist. Furthermore, the witnesses brought are singular; otherwise, from L. 5, cod. de tesi, it is clear that no credence should be given in a matter of grave importance to a single witness, even if he shines with the honor of the Curia. Indeed, even if there are more witnesses, no proof arises from their testimony, if in their statements there are not contests that conform to what was handed down by the Rota in Faventina, Sponsalium, June 7745, § 5, before Lana. Nor can one recur to the argument that marriage and pregnancy should be considered as a presumption of the woman's consent to marriage; for this occurs only in the case where it is clearly established that there was a prior promise by the man, and of the woman's integrity and honesty. If these are lacking, the law admits the woman's right to marriage and to the dowry, and the defendant must be absolved, according to Cosci, De Spons. filior. famil., Vot. 7, n. /c. In the matter of the man's promise and the woman's honesty, these are lacking, as it is extracted from the words of the witnesses. Regarding the promise, there are no words on the part of the man that clearly and distinctly indicate the same. For from the words related by the witnesses, nothing is found other than vague words, which do not constitute a true promise, nor do they precede the marriage. Regarding the woman's honesty, there are...

[*Latin ed. p. 230*]

In the matter of the betrothal, witnesses testified that they had heard that the woman had suffered an abortion before her last pregnancy. However, the advocate added that even if the betrothal were proven, it should be dissolved, if just causes were present; for forced marriages often have unfortunate outcomes, as stated in Chapters concerning oaths, and in Chapter concerning requisitions. Furthermore, beyond the animosities arising from

Translated by churchlatin.ai, a product of Boyne Archives

the dispute between the betrothed, there is absolute reluctance on the part of the man to take Gabriela as his wife. The advocate argued that it could not be maintained that both tribunals should uphold their judgments in the part where the man is condemned to pay the woman 400 livres: 1) Because it is unknown whether the man has suffered any harm. And 2) if it were established that he subjected himself to her after having previously been raped, he should not receive a reward based on his own lust. He also maintained that the sum of money belonging to Gabriela should not be given force by the title of dowry, because the judgment concerning her does not speak of it; and because it is not established in the matter that there was an act of rape, the woman, even if she has been defiled, loses not only the right to marriage, but also the right to a dowry, and the accused must be absolved according to the Code, volume y, number 86. With these points presented on both sides, the intention was to resolve the doubt: Whether and how the judgment of the Metropolitan Tribunal should be upheld or overturned in this case.

RESOLUTION. The Holy Congregation, after discussing the matter on March 23, 1878, gave the following response: Considering that the matter has been judged, and in accordance with the intention, it is to be written to the Bishop that the synodal provision regarding the faculty of dispensing with formalities in contracts should not be upheld. The Ordinary is to grant the dispensation for the marriage.

FROM THE ABOVE, WE GATHER: 1. Any question, even concerning betrothals, should be defined by a double, conforming judgment at different levels of jurisdiction.

[*Latin ed. p. 231*]

231. In matters concerning betrothals, a judgment must pass to a definitive state; thus, an exception to a concluded dispute arises, and it cannot be recalled to trial any further, unless a prior request for complete restitution is made and obtained.

II. In the matter of betrothals, proving the existence thereof has been a difficult task; and the obstinacy of the woman caused the judgments of the courts to pass to a definitive state; therefore, it was necessary that the woman first request the benefit of complete restitution in order to properly reopen the question before the Sacred Congregation.

III. It has never been permitted to Bishops to insert anything into their synodal constitutions that would derogate from common law, even if it is considered necessary to eradicate corruption and to protect sacred things and the religion.

1. 2 The Fathers, considering the matter to be already judged, did not wish to speak of its merits; and rather than defining with their own judgment whether the alleged betrothals were valid or not, they considered

Translated by churchlatin.ai, a product of Boyne Archives

it necessary to warn the Ordinary of the undue authority that had been conferred upon him by the synodal constitutions.

Betrothals, by common law, to which Trident has not derogated, are usually made solely by word, and therefore are difficult to prove; because the same thing that one denies, another affirms; and even with witnesses, if they are present, the truth often does not emerge. Hence, there are many quarrels and lawsuits between families.

Prosper Lambertini, *Institutiones*, 46, concerning the matter, says: "Some Bishops, in order to prevent these evils, have ratified invalid and empty betrothals, which are made without a priest and witnesses present, in such a way that the Council of Trent decreed throughout the world that marriage is invalid unless it is performed before a priest and two witnesses. Others, however, considered such betrothals to be completely abolished, which are not prescribed by the laws..." These opinions, however, cannot be approved by one who governs a matter according to the laws, and not rather rashly and without consulting himself.

Indeed, shortly after the Council of Trent, the Sacred Congregation of the Council was asked to declare whether these clandestine promises, just as clandestine marriages, had no validity or effect. But the same Sacred Congregation, in the year 1573, judged: "The Council of Trent, Session 24, chapter 1, concerning the reform of marriage, decreed that only marriages contracted in the present tense by words are invalid and null; but betrothals contracted by words in the future tense remain within the same limits of law in which they were before the Council."

From this, it can be clearly understood that the decree of the Bishop, which declared betrothals invalid, which had not been made according to the norms and prescriptions established by him or by the Diocesan Synod, is invalid. For by this decree, the Bishop limits the freedom of the faithful by derogating from common law, which, in this respect, Trident left completely intact.

2.

[*Latin ed. p. 232*]

232. The Baptismal Font. May 19, 1877; March 23, 1878. Summary of the case. In the Diocese of N..., there is a town of nearly four thousand inhabitants, which has three parishes, besides a rural parish to which all the inhabitants of the surrounding countryside belong. Of these three parishes, one is a Collegiate Church dedicated to St. Andrew the Apostle, located in the center of the town, and its pastor holds the title of Archpriest; the second is dedicated to SS. Philip and Jacob, and serves the eastern part of the town; the third is dedicated to St. John the Apostle and Evangelist, and governs the southern part of the town. It should be known that the town has two gates, one western and one eastern, and all houses located outside

Translated by churchlatin.ai, a product of Boyne Archives

these gates are subject to the jurisdiction of the Archpriest. Recently, the parish of St. John was, by order of the Bishop, transferred to the Church of St. Francis, belonging to the Conventual Minor Friars, which is located near the stone foundation outside the western gate; and all houses outside the same gate, with the consent of the Archpriest, were united to the parish of St. John, or rather, St. Francis. This union was confirmed by a letter from the Ordinary on August 21, 1874. For as long as anyone can remember, the Collegiate Church had a single baptismal font, which the other pastors used in administering baptism to their parishioners, and they received the emoluments that the faithful offered according to their ability and piety. Each pastor kept the key to the baptistery. There was, however, one register of baptisms, kept and at the expense of the Archpriest, in which all the pastors indiscriminately wrote the names of the children whom they regenerated with the sacred washing. The emoluments, which were derived from the baptisms during the course of time, were collected by the Archpriest, whatever they might be.

[*Latin ed. p. 233*]

The baptismal font belongs to the parish to which the faithful pertain. It must be noted that the Archpriest was obligated to maintain the font. A few days after the parish of Saint John, adjacent to the houses, was established, the parish priest requested from the Bishop the permission to erect a baptismal font in the Church of Saint Francis, and the Bishop, on September 12, 1874, granting the request with prayers, responded: "Since it is known to us that what has been presented is true, and since the Church of Saint Francis has been established for the use of the parish, for a just cause, and in accordance with ecclesiastical laws, we freely grant permission to erect the baptismal font, as is fitting." However, this decree was not notified to the Archpriest, and its execution was delayed until April of the year 1876, when the font was erected in that very place, where it had existed in ancient times, when the Church of Saint Francis was a collegiate church under the title of Saint Mary. The Archpriest, considering his rights to have been violated and damage to have been caused to him, petitioned the Sacred Congregation of the Council with a written appeal, requesting the removal of the font and the restoration and restitution of his rights, from which he claimed to have been deprived. The Bishop, according to custom, was consulted for information and opinion, and openly expressed a contrary opinion to that of the Archpriest. A summary of the discussion.

FOR THE PARISH PRIEST OF SAINT JOHN. It is to be noted first that the laws of the Church most earnestly desire that provision be made for the most convenient and prompt administration of baptism, and therefore, as testified by Francés, *De Eccles. Cathedr.*, chapter 1, number 25; indeed, for the benefit of the people, it has been decreed in the Provincial Council of Milan III that it can even be erected in non-parochial churches. These

Translated by churchlatin.ai, a product of Boyne Archives

are in agreement with Catalanus, Crispino, *Della Comment.*, *Visita pastorale*, page 2, § j, in the Ritual of Rome; Barbosa, *De Parochis*, chapter 18, number 7; and especially the Sacred Congregation of the Council,

[*Latin ed. p. 234*]

The baptismal font, which, omitting others, was made in Fulginata on June 22, 1720, concerning which the question was raised: "Whether the newly constructed baptismal font in the Church of Saint Mary in the Castle should be maintained," the response was: "Affirmative, leaving to the parish priests of Saint Mary in the Castle the freedom, as is customary, to send children to be baptized to other parishes, and furthermore." It was not stated that this practice would be an obstacle, since it does not prevent the erection of a baptismal font in parish churches, where baptismal fonts already exist, in order to distinguish the registers of the churches from those of other curates, as was stated in Reatina, concerning parochial rights, on January 14, 1860, §; and in several other decrees of the Sacred Congregation, especially in Guar, on June 13, 1654; in Boiano, concerning parochial rights, on May 24, 1732; in Vercelli, concerning parochial rights, on November 18, 1747; in Camerino, concerning the erection of a baptismal font and the right to baptize, on February 10, 1748; for, when the common good requires it, even in prejudice to the Cathedral Church, the erection of a font has been approved, as in Fabriano, concerning the baptismal font, on June 21, 1732, in which the Chapter of the Cathedral requested the removal of the font erected by the Camaldoli monks in the Church of Saint Blaise; and the Sacred Congregation, although initially siding with the Chapter, later withdrew from its decision and did not change its opinion. From these things, it was understood that in the case in question, the erection of the baptismal font in the Church of Saint Francis should be maintained, because the common good and the utility of the people required it. Especially since the Bishop reported that he had been led to the erection by an unavoidable necessity, and that the parish priest had been caused damage. Therefore, the Archpriest's image was fading, since the parish priest had carried out the controversial erection, not with authorization, but under the urging of the Bishop. Hence, the conclusion was reached in favor of maintaining the baptismal font in the Church of Saint Francis.

DEFENSE OF THE ARCHPRIEST.

The defending Archpriest maintained that, with all of this, the damage had been caused to the archpriest. And first, it was proven...

[*Latin ed. p. 235*]

The font of baptism: 235. Concerning the very ancient possession of a unique baptismal font, favored by the Collegiate Church, he stated that the font was not necessary, since there are churches and many parochial towns

Translated by churchlatin.ai, a product of Boyne Archives

that do not have a baptismal font, and the parochial church, which is the mother church, has only one font. History teaches us that in the early times of the Church, only the Bishops, as Blessed Benedict in his XIV Institutes, i, n. 4, states, administered baptism in the cathedrals; but as the number of the faithful increased, baptisteries were erected in other churches, so that in towns only one church would have a font. From this it follows that "not all pastors could administer baptism to their flock," but only those "who are in mother churches or in churches with baptismal fonts... for the power to baptize... although it can be included among the rights of a parochial church... is nevertheless not a necessary constituent of a parochial church, since this can exist even if it does not have a baptismal font, following the example of the early churches, when even in the largest cities there was only one baptismal font, as Thomassin observes, and the same is said to be preserved in many cities of Italy." *Petra, In Const. Admon. Gregorii IX, § 15 et seq.; Francés, De Eccl. Cath., Cap. 9, n. 24; Barbosa, Iuris Eccles., Lib. 2, Cap. i, n. 25; De Luca, De Parochis, Dis. 2c, n. 10.* The same decrees, he added, were issued by the Holy Council, which, referring to Fagnano, Cap. Cum contingat De Decimis, n. 57, decreed "that in all parochial churches there must be a baptismal font, unless there are in some special churches designated baptismal fonts, which are called mother churches or baptismal churches, so that a distinction may be made." The same statutes, he added, were issued by the Church of Licien, on April 19, 1606, Vol. 10 Decr. p. 149, *a ter g.* From these points, the defender concluded that the pastor of St. Francis had no right to erect a new baptismal font, because the Collegiate Church already possessed one. With this possession established, which was, moreover, not denied by the pastor, the necessary steps could be taken for the erection of a new baptistery, the Archpriest affirmed.

[*Latin ed. p. 236*]

Fontis 236. Concerning the baptismal font, Clement. Frequently, *De Verb. Signi*. Rota, Decree 97, n. 4, p. 8, recently; because it was a matter of causing harm to the archpriest. And therefore, as Fagnanus wrote in Chapter 39 addressed to the hearing concerning ecclesiastical buildings, a prejudice could be brought against the unwilling rector, but not if the rector himself had not been cited and consulted. This doctrine, he maintained, had been confirmed by the Sacred Congregation of the Council in *Guardien*, on June 13, 1634, in which the erection of a baptismal font made by the Bishop was invalidated, because the consent of the Archpriest, who alone had the right to the font, was lacking. Therefore, to act secretly is understood as concealing the adversary, and not notifying him, if only one feared his opposition or ought to have feared it, according to law 3, ff. § "Whether by force or secretly; for that which is introduced secretly ought not to have any stability," Chapter 3, *De Reg. Iur.*, and possession acquired in this way is not maintainable. Rota in *nii* 1703 §

Translated by churchlatin.ai, a product of Boyne Archives

ult. *cor.* Muto; Wormatien. The defender argued that the erection made by the parish priest was a misappropriation acquired by Saint John, and that it did not belong to him, and that the misappropriation was against the Archpriest; therefore, he must first of all be restored to his possession. Rota, Decree 277, n. 13, p. 16, recently. Nor could the misappropriation be justified by an episcopal decree, for the Bishop had ordered the baptismal font to be erected according to ecclesiastical laws, the first of which is that those who have an interest must be heard. And even if the decree had been expressly ordered for execution, the misappropriation would still persist, because the rescript of the highest authority is not sufficient for one to invade the possession of another, as in *S. seu Mutinen*, March 4, 1831 *cor.* Rota in *Ferrarien. Rivadeneyra*; and although possession may be violated by the decree of some judge, it always remains a misappropriation: for, as the Sacred Rota taught, "it is not necessary that one add to oneself the possession of another's thing by one's own authority, but even if it is confirmed by the authority of a judge and by a decree, it is not considered legitimately done where no order is preserved, and especially where that which is necessary in judgments is omitted."

[*Latin ed. p. 237*]

The "fons" (font) for the baptismal font requires the owner's "propria" (own) request, to present and justify the necessity of its establishment, as stated in the document of July 5, 1819, concerning the case of "Marco" of Subiaco. After these preliminary remarks, the Orator, proceeding to demonstrate the lack of valid reasons for the establishment of the font, stated that only two reasons were presented, namely, the increase in the number of the faithful and the distance of the parishioners of St. John's from the Collegiate Church. Regarding the first point, he stated that, up to August 21, 1874, the parish of St. John's had approximately 600 parishioners; however, on that very day, nearly 300 had been added, because the Archpriest had built houses outside the western gate. Indeed, a parish of only nine hundred souls, consisting of the same faithful, cannot reasonably be considered so numerous as to necessitate a separate baptismal font in a church that is not its own, especially when one font has been sufficient for so many centuries. He called the reason of distance ridiculous, for the entire town, which extends more in length than in width, scarcely exceeds 750 meters, and the Collegiate Church is located in the center of the town; the roads are convenient and paved, so that, as far as anyone can remember, it has never happened that an infant died without baptism due to the distance from the Church. Furthermore, he emphasized that this distance should not be considered, because the Holy Congregation, on July 9, 1672, in Cassan, denied the parochial rights, the faculty of establishing a baptismal font in a filial church to the detriment of the parish, which was two thousand paces distant, and the roads were

Translated by churchlatin.ai, a product of Boyne Archives

difficult and rough due to the continuous abundance of snow. He insisted that, in the absence of valid reasons, and in accordance with the reason and the uninterrupted practice of the Holy Congregation, the establishment of a new font to the detriment of the church that has long possessed it, cannot be permitted. The Defender presented several resolutions of the Holy Congregation in which the establishment of a new baptismal font in parochial churches had been denied. Finally, he pointed out that such a lack of valid reasons had indirectly implicated both the Bishop and the parish priest. The Bishop,

[*Latin ed. p. 238*]

In the year 1873, the Font of Baptism, determining a new circumscription of parishes, made no mention of the necessity of a new font; the parish priest, having obtained the faculty to erect said font, postponed the matter for two years, which clearly demonstrates that the alleged necessity did not exist in any way. After this, several Orators responded to the difficulties, and especially those raised concerning the erection of a font in the rural parish in the year 1846. Regarding this, they maintained that the violation of the law of the Collegiate Church, which occurred at that time, was not a sufficient reason to violate it even now. Furthermore, pointing out the difference between the first and the present case, they stated that the rural parish had almost three thousand parishioners, and a sufficiently large territory, and that many lived two, or even four thousand paces away from the Collegiate Church, while being closer to the Church of St. Francis. To these factors, it should be added the winding roads, the paths broken by fields, the salty turns through the woods; all of which provided the most just reason for the erection of a baptismal font in the rural parish. However, these reasons were not applicable to the Church of St. Francis, which rises immediately outside the gate, and has only nine hundred parishioners, a large part of whom are closer to the Collegiate Church than to the Church of St. Francis. From these considerations, they concluded that the font should be removed, and that the Archpriest should be compensated, because, since the parish priest did not have the right to erect a baptismal font, and since he erected it without cause and without the Archpriest, as required by law, his action could in no way be justified. After these arguments were presented by both sides, the matter was put to a vote. The question was: Is there a place for the maintenance and restoration in favor of the Archpriest in this case?

RESOLUTION. The Sacred Congregation of Councils, on May 19, 1877, having discussed this case, responded with a resolution in the negative, considering the matter to be burdensome. The Archpriest, feeling

Translated by churchlatin.ai, a product of Boyne Archives

aggrieved, obtained a new hearing, and the case was again debated.

[*Latin ed. p. 239*]

Font of Baptism 239 In the new proposal, the parish priest, Father Francis, also chose a defender. This defender argued in favor of the erection of the baptismal font, stating that every parish church has the right to erect a baptistery, unless it is subject to another, larger church, or is deprived of this right for some special reason. However, he asserted that neither of these conditions applied in the present case, since the aforementioned parish churches are entirely equal and independent of each other, and that the material existence of a baptismal font in the collegiate church does not grant it any superiority over the other churches. Furthermore, he maintained that it could not properly be called a "mother church," nor improperly a collegiate church, since it is not certain that the other churches originated from the collegiate church, nor are they subordinate to it, or assistants in the performance of sacred rites. Moreover, he pointed out that the retention of the key to the baptismal font by the parish priests demonstrated their dominion over the baptistery, and further emphasized the distance from the common font. The defender argued that the collegiate church, for the inhabitants outside the western gate, had increased the number of the people, and that the approval of the citizens for the erection of the new font showed that the parish priest had not only exercised his right, but had also accomplished a useful work. On the other hand, the defender maintained that, in order for the new font to be erected, the archpriest required three things: 1. A very serious reason; 2. The consent of those who have an interest; 3. Compensation (to the extent that the first and second requirements are met) to the church that would suffer prejudice. In the case of the erection of the font in Spoleta on January 23, 1873, he stated that the reasons for the erection were clearly not serious; that the consent of those who had an interest was not required, as was evident from the very discussion of this matter; and that the compensation for the damage suffered was lacking, as was evident from the very decree. Therefore, he argued that, since the Ordinary had neglected these substantial forms, the erection of the font was of no value. He also argued that the lack of "mother church" status in the collegiate church could not be opposed, as other parishes with filial churches could not claim the right to erect a font at any time.

[*Latin ed. p. 240*]

The baptismal font, he argued, did not necessarily indicate the existence of a parish, citing the aforementioned witnesses, Fagnani and Cardinal Peter. Furthermore, he referred to the resolution of the Holy Congregation of the Council in Ferentino on March 18, 1809, which stated that the parish of the Archpriestly Church of Saint Peter in the town of Supino possessed a single baptismal font, and that the Archpriest and the parish priest, as well

Translated by churchlatin.ai, a product of Boyne Archives

as the custodian of the key to the baptismal font located in the Archpriestly Church, retained their own registers of baptisms; and yet, concerning the two proposed doubts, namely: 1. Whether it is established that the Archpriestly Church of Saint Peter in Supino is a parish; 2. Whether it is established that the same Archpriestly Church has a private right to possess the baptismal font; the response was: Affirmative. Regarding the majority, it is established; regarding the parish, it is not established. These and other minor points were debated, and the proposed question was: Whether one should adhere to or depart from the decisions in this case. RESOLUTION. The Holy Congregation of the Council, on March 23, 1878, responded: Adhere to the decisions and nothing more.

FROM THIS, ONE MAY GATHER:

I. In the early times of the Church, baptismal fonts existed only in cathedral churches, and only the bishops administered baptism to the faithful who came to the cathedral church.

II. Over time, as the number of Christians increased, baptismal fonts were erected in other churches as well, and the rectors of these churches were granted the faculty to administer baptism.

III. Such churches were, in most cases, properly called parishes, inasmuch as other parishes were formed from the division of their territory, which were called daughter parishes, or improperly, whenever one parish remained, and other churches were subsidiary or auxiliary.

[*Latin ed. p. 241*]

IV. Concerning the Churches that possess a baptismal font. 241. Simply, those churches that possess a baptismal font, and also, with regard to parochial churches, have the right to administer baptism; V. Therefore, the general principle is that a parochial church has the right to erect a baptismal font, subject to the limitation that there are not already churches or mother churches, or baptismal fonts, which possess the exclusive right to the font. VI. In the case where a collegiate church retains the privilege of being a mother church and the exclusive right to the font, it appears that the erection of new baptismal fonts by the parish priests was considered as a facultative matter; VII. Consequently, the obligation for the parish priest to consult with the archpriest ceased, and it was not necessary that there be a cause or necessity, or evident utility, for the erection of a new font. VIII. With these considerations in place, it is said that the exemption ceased, and therefore, the archpriest was denied compensation for the emoluments he received, because perhaps they were considered as a reward for the small labor he performed in issuing the certificates of baptism.

REGARDING THE RIGHTS OF PAROCHIAL CHURCHES.

Translated by churchlatin.ai, a product of Boyne Archives

September 22, 1877, and June 15, 1878.

Summary of the facts.

The Chapter of the Collegiate Church M. s. addressed a petition to the Congregation of the Council, explaining that the habitual care of souls resided with the Chapter; that, by an immemorial custom, when the Chapter is called upon for a funeral, the right to bless and to wear the stole belongs to the highest office present; that, in the absence of all offices, it belongs to the senior canon, and certainly not to the parish priest, or his coadjutor. When the Archpriestal parish is vacant, which is the highest office of that church, the priest G. Oeconomus Curatus resigned.

Acta, vol. XI, p. CXXV. 16

[*Latin ed. p. 242*]

Canon 242 stipulated that, unwilling to abandon this custom observed among the parochial clergy, the Bishop protested, recognizing in an unheard-of manner that, by an extrajudicial decree of November 18, 1875, any act performed by any priest of that place was declared abusive; and he ordered that only the Archpriest curate, and, in the present vacancy of the parish, the Curate Economus, or his deputy delegated by him, should wear the stole in the association of the dead, administering blessings in the homes of the deceased, observing the prescriptions of the Roman Ritual and the practices of the Church. The Chapter, unwilling to suffer a violation of its own rights, petitioned the Sacred Congregation of the Council to revoke said decree, declaring that the aforementioned custom should be maintained. The Congregation of the Council, having inquired about this matter from the Bishop, received a response in which he, acting in accordance with the mandates, stated his views. The alleged rights of the Chapter lacked any legal basis; the care of souls is not habitual and belongs to the clergy, but is actual and pertains to the Archpriest curate, the highest dignity of the Chapter. The Chapter members had never interfered in the affairs of the parish; therefore, the custom alleged could not have existed, nor could it have had any basis. The prescriptions of the Roman Ritual and the decisions of the Sacred Congregation of Rites are contrary to the plurality of pastors in the same parish; therefore, the alleged rights of the Chapter collapse under their own weight, because all are presumed. It is not to be tolerated that all the pastors of the parish, except for the Curate Economus, who, when the people were afflicted by the cholera, were absent with great astonishment and to the scandal of the faithful, while they were supposedly concerned about parochial rights; whereas, at least out of charity, they were obligated to be present with the dying and those suffering from that terrible disease.

Synopsis of the dispute. RIGHTS OF THE CURATE ECONOMUS. The use of the stole and the blessing of the dead, even if the Chapter of the collegiate church attends a funeral, seems to pertain to the Curate Economus;

Translated by churchlatin.ai, a product of Boyne Archives

and, as the priest G.

[*Latin ed. p. 243*]

For the proper governance of parishes, 243. The parish priest is substituted and replaced by the Bishop, or by the Archpriest, if the former is deceased. However, the substitute, by law, succeeds in the place of him to whom he is substituted, both in rights and in obligations, as stated in the law, book 1, title 1, chapter 1, De Vicariis. He enjoys the same rights and privileges, as elegantly stated by Baldus in the book De Parochianis, chapter 1, concerning Bishops and Clergy, numbers 1 and 2. He who is substituted must be of the same jurisdiction and condition as he in whose place he is substituted. Therefore, it is not doubtful that the Economus must give the same honor to the priest as to the parish priest, and must grant him precedence in the aforementioned matters, in the functions that are granted to him, as stated by Archpriest Samuel in De Sepultura, treatise 1, dispute 1, chapter 2, number 1. Gratian, in De Disceptationibus, book 2, chapter 8, number 84. The Rota in Sutri, February 4, 1713, § Separatis in Unitate, confirmed this. It is not required that the other qualities of the one who is substituted be present in order for him to enjoy the same privileges, because in these matters, the attention is not given to the majority or minority of the person, but to the function, the exercise of the act, and the sacred vestments, which are necessary to have the precedence that is regularly due, as Felin explains in the chapter concerning those in whom the substitute is present, number 1, De Officis. Delegation, Gratian, De Disceptationibus, book 2, chapter 8, number 4. Hence, the less noble are given precedence over the more noble, and the more dignified, because of the act that is proper to them by office, and in the exercise of that act, as stated in the law, book 1, title 1, chapter 1, De Vicariis. Felin, in the rubric concerning the greater and obedience, number 2. Thus, a simple, removable curate must precede other priests who are older in age and higher in promotion, as declared by the Sacred Congregation of Rites in Nuceria, April 16, 1644. Indeed, the curate, performing his office with the surplice and stole, even precedes the rector of the church to whom he serves, as stated in Nuceria Pagatorum, July 2, 1637, by the Sacred Congregation of Rites. The Sacred Congregation of Rites judged that a priest, a curate or portioner in a parish, performing his office with the cotta and stole, should have the first and most dignified place in the choir, even above his own rector, notwithstanding any contrary custom. The same was judged in Macerata, June 10, 1656.

[*Latin ed. p. 244*]

Canon 244 concerning Parochial Matters. In the same manner, the Bishop present, wearing his cope, is incensed with incense during solemn Vespers, after the celebrant, according to the *Caeremoniale*, book 2, chapter 2. The common opinion of Doctors is that in a funeral procession,

Translated by churchlatin.ai, a product of Boyne Archives

in which the parish priests walk as prelates and pastors, the proper parish priest must always precede all others, and all acts of jurisdiction pertaining to that occasion are to be exercised by him alone, whether in the house of the deceased, along the way, or within the parochial church, as has been repeatedly decided by the Holy Congregation, especially in Aversa on September 13, 1640, in Novara on September 21, 1681, by Barbosa de Paroch., chapter 5, number 11, and chapter 26, number 74. The wearing of the stole in a funeral procession is a sign of the parish priest's office and jurisdiction, as is evident from the decrees of the Sacred Congregation or of Monte Cassino, June 22, volume 2, from the decrees of the Holy Office, and from the *Rota Nullius* in *Cassinen*, regarding the wearing of the stole, 1714, § *Merito cor.* Ansaldo, *Monacell. formul. legal*, title 13, formula prima, which states that it must be worn by the proper priest alone, with number 77. Therefore, the parish priest must, in every way, precede anyone else, including his own economic administrator, as Barbos, *de offic.*, states above, and as is stated in *Potest. Parochi*, part 3, chapter 26, number 7. De Luca, *Praeeminent*, discussion 43, number 3. And this is rightly so; for the very fact that someone is appointed as a parish priest or economic administrator obliges him to administer to his people not only the sacraments, but also those things which are connected with his office and are necessary for the care of souls. The office of a funeral and the administration of sacraments are mutually connected, as they are both ordained for those things that are due to the dying and the deceased, by virtue of pastoral office. It is clear that the right to administer the sacraments belongs to the parish priest or economic administrator with regard to all those who are within his parish; therefore, the right to perform the office also belongs to him. Furthermore, the office of administering sacraments is to be considered: as Suarez states in *3 par. D. funeris Thom.*, discussion 13, section 2, in the end: "It pertains to him to whom the sacraments pertain, to administer the sacraments." But the sacraments...

[*Latin ed. p. 245*]

The administration of parochial rights pertains solely to the Parish Priest, as stated in the Tridentine Council, Session 24, Chapter 1, concerning reforms. It is futile for the Chapter to claim a custom for safeguarding its rights, because Pius [V] decreed that four constitutions should be observed as if they were abuses, and that all customs contrary to parochial rights should be abolished.

CHAPTER RIGHTS. The Chapter, on the contrary, asserts its right to the matter in question, both by virtue of the habitual care entrusted to it, and by virtue of an ancient custom. It derives the habitual care of souls from a decree of the Curia, issued on November 18, 1779, in a case in which two priests aspiring to participate in the Collegiate Church, having arrived at

Translated by churchlatin.ai, a product of Boyne Archives

the time of admission and having fulfilled the requirements according to the statutes, requested to be admitted to an examination, both in doctrine and in qualifications, "Having examined the acts of the examination of the priests... aspiring to participate in the Collegiate Church, considering their qualities and qualifications, which require greater study and practice, so that they may become more useful to the Church and of the greatest help to the people in the care of souls, we declare... that they should be admitted to the aforementioned participation at the time of admission, according to the custom of that Church. However, after a year, they should return for a new examination... so that, considering their progress in studies and in the service of the Church, they may be appointed to give catechisms in the Church, and to perform other parochial functions for the direction of consciences and the salvation of souls..."

Furthermore, the same decree states that even those who have completed their service are not to be admitted to participate in the Chapter, unless they first present "to the Chapter, in addition to the usual requirements regarding service, also 'letters of declaration... from the Curia regarding the suitability and qualifications of the applicants.'" From this document, two things can be gathered: first, that the care of souls belongs to the Chapter; second, that each participant among them,

[*Latin ed. p. 246*]

Consequently, it is necessary for parochial vicars to be capable of performing catecheses in the church, and of fulfilling other parochial duties for the guidance of consciences and the salvation of souls, even if the parish priest or the curate, or another acting under his authority, retained the care of souls. Given this, it is not surprising that the Chapter, from the beginning, reserved for the parish priest, according to the Sacred Canons, one of the rights belonging to him, namely, the right to wear the black stole at funerals for the first dignity or for the senior canon, and to bless the bodies, when the association is present, whether it be the entire Chapter or a part of it.

Furthermore, the prescriptions of the Ritual, issued by the Apostolic See of Saint Pius V, are to be considered, for they are relevant to this matter, because in this case, the parish priest is deceased, and the Chapter is present. Therefore, it cannot be objected that, with the Chapter present, a more solemn stole should be worn, and that the body should be sprinkled with blessed water. Moreover, an ancient custom favors the Chapter. And therefore, the Chapter, proceeding to the second argument, states that, even if this custom were contrary to the law, it would not invalidate the proper right. For a custom has the force of law if it is reasonable and legitimately prescribed. A custom is considered reasonable if it does not contradict natural or divine law, nor is it disapproved of by canon law, nor does it provide an opportunity for sin (Suarez, *lib. de leg.*, cap. 6, n. 10). A custom is said

Translated by churchlatin.ai, a product of Boyne Archives

to be legitimately prescribed if it has the frequency of actions by which it is introduced, the will to be introduced in those who are obliged to observe it, the consent, whether explicit or tacit, of the legislator, and the duration of time, which in a custom contrary to the law must be 40 years (Devoti, *Inst. Can.*, lib. i, cap. 2, § 50). All of these elements are present in the custom in question, the Chapter asserts; and it has proven the frequency of actions through twenty trustworthy witnesses. They testify that they have seen, from time immemorial...

[*Latin ed. p. 247*]

It has been observed that the rights of the parish have been violated, and they confess that they have heard of this from their elders. Regarding Lucca, reference is made to the Council of Trent, Decree II, paragraph 12, concerning tithes, and Decree V, paragraph 9. Having considered these matters from various perspectives, the purpose was to resolve a doubt. Whether the decree of the Curia should be confirmed or rejected in this case.

22. RESOLUTION. The Holy Congregation, after discussing the matter in September 1877, and considering the presented evidence and custom, decided to respond as follows, especially concerning the asserted habitual care and the prosecution of the cause. To demonstrate both, the advocate for the Chapter argued. To prove the habitual care, he used the very words of the Ordinary, who, writing to the Chapter on July 12, 1854, concerning a certain question, among other things, said: "Since the care has been entrusted to this Chapter, which provides due service to the Archpriest..." And further, in another letter of the same year: "In collegiate churches, where the first dignity is of such a nature, (to which, indeed, the care of souls is attached), the care of souls is entrusted to the Chapter." Therefore, it must be concluded that such care is habitually held by the Chapter, and actually exercised by the Archpriest.

Regarding custom, the advocate for the Chapter stated that it has been proven by the testimony of many, as mentioned in the first proposition; and he declared it to be reasonable, as it descends from the habitual care residing in the Chapter. If these statements are not considered sufficient, the advocate implores that a formal examination be ordered, under oath, of both the Oeconomus who has held the office of parish priest for twelve years, and of his substitutes, to demonstrate whether the custom in question has ever been disputed, suspended, or abolished. Having considered these matters as well, the following point must be explained.

[*Latin ed. p. 248*]

Article 248 concerning Parochial Rights. A Doubt. Whether the decree of the Roman Curia should be confirmed or annulled in this case. To this, the Sacred Congregation of Councils responded on June 15, 1878: The decree

Translated by churchlatin.ai, a product of Boyne Archives

is to be annulled. WHEREFORE, WE DECIDE: I. That it can be found in the statutes of Cathedrals and Collegiate Churches, from their foundation, the care of souls; which is divided by canonists into habitual and actual care; but so that in each individual [member] there is habitual care, while in one [person] there is actual care for its exercise. II. That it does not seem to act contrary to the law for a Chapter, to which the care of souls belongs, if it reserves some rights from the beginning, while appointing one [person] to exercise the actual care. III. Therefore, the Chapter is to be considered as its own Parish Priest in the functions and rights it reserves for itself: so that each [member] duly appointed can exercise the care of souls with regard to those functions and parochial rights reserved to it. IV. The existence of habitual care with the Chapter is demonstrated by the institution of a perpetual vicariate; especially if a suitable provision is made for the Vicar from the revenues of the Chapter. V. Therefore, if a member of the Chapter puts on the stole and sprinkles the dead with holy water, it does not seem to act contrary to the law, but rather to exercise its right as a Parish Priest with regard to the reserved rights. 1. In the Chapter of the Basilica of the Vatican, although the actual care of souls is exercised by a beneficed Vicar, nevertheless, because the habitual care resides with the Chapter, each member has the right to instruct the parishioners in catechesis, to bring the Eucharist to the sick, especially on the principal feasts of the year, and also to administer the sacrament of baptism.

[*Latin ed. p. 249*]

MIDDLE ANNUITY 249 MIDDLE ANNUITY. On September 2, 1876, April 21, 1877, and July 20, 1878. Summary of the case. The priest Bernard, having been promoted to a canonry in the Cathedral Church, presented the following to the Congregation of the Holy Council: he had received the canonical prebend by order of the Ordinary, and therefore he was burdened with the obligation to contribute to the Fabric of the Church, an amount corresponding to the middle annuity, according to the fruits of the benefice, as stipulated in the Constitution *Pius et Misericors* of Benedict XIII. Since he must render an account of the revenues of the canonical prebend, he asks: 1. Whether the distributions to the choir should be included among the revenues of the benefice, even if they are distinct from the prebend, calculating the revenues according to the norms of the Holy Council of Trent, as is the case in the Chapter of the same Cathedral. 2. Whether, among the burdens to be deducted, the burden of the inheritance tax should also be calculated, which those now holding benefices are required to pay to the Italian Government, according to a sextant (commonly called "il due per cento") on half of the share corresponding to the revenue, deducting only the mobile tax. The Bishop, duly consulted, stated that both the Chapter Constitutions and the Diocesan Synod established that the full fruits of the first year, without any diminution, must be paid for the dowry

Translated by churchlatin.ai, a product of Boyne Archives

of the Fabric of the Church, in obedience and in accordance with the spirit of the Bull *Pius et Misericors* of Benedict XIII. Thus, he truly holds that half of the full fruits of the first year must be paid, lest the Church remain without its dowry, and this does not burden the provision, for as far as it is concerned, it is the same as if the provision were delayed by six months. However, the tax which they call the "inheritance tax" (commonly called "di trapasso"), imposed by the Government, should not be deducted, because this affects the person and not the prebend, which tax, however, is regulated and required according to the age of the provision, and not definitively.

[*Latin ed. p. 250*]

250. The annual dues, "as is asserted in the prayers, are not to be diminished. However, the third [part], which is the distribution, should not be deducted, whether it is separate or joined with the stipends, as is the case in this Cathedral, because the perception [of the dues] itself depends on the diligence of the choir; therefore, in the annual dues of fruits, the distributions are also included."

Dispute in summary. The Canon, Bernard, therefore asks two questions: 1) Whether the annual dues should be paid from the distributions, even daily ones, even if these are not distinct from the stipends; 2) Whether, among the burdens to be deducted in this payment, the inheritance tax should also be included.

Regarding the first question, it would seem that the annual dues should be paid from the daily distributions, even if they are not distinct from the stipends; for Benedict XIII, cited in *Const. Pius et misericors*, ordered that, for the restoration of Cathedrals and Collegiate churches, "in the future, from the parish priests, together with uncertain annual income, an amount of 100 Roman coins should be collected, and from Canonries and benefices, both resident and non-resident, and simple, located outside the Collegiate churches, of whatever value they may be, the annual dues for the fabric of the Cathedral church should be paid and deposited accordingly..."

Since the Constitution speaks indistinctly of benefices and Canonries, and subjects all of them to the payment of the annual dues without any limitation; indeed, although it excepts churches with an annual income of less than 100 coins, nevertheless, in determining the amount of this income, it intended to include even uncertain revenues; it is clear that the distributions, even daily ones, should be included among the revenues of the benefice, even if they are not distinct from the stipends.

It should be noted that Canons are legally obligated to contribute to the maintenance of the church from the distributions. Therefore, the Rota, in decision 482, *cor. Mazanedo*, number 14, states: "It is not an obstacle that

Translated by churchlatin.ai, a product of Boyne Archives

the revenue of this clergy consists of fruits, which..."

[*Latin ed. p. 251*]

In the yearly accounts of 251, certain sums are owed by those present and participating, and these should be considered as part of the daily distributions, as stated by Riccius... "since these revenues must remain in proportion to the yearly amount held by the sacristy." And the Sacred Congregation of Councils, in Rieti, regarding the yearly accounts, on May 12, 1770, decided that Canons, beneficed clergy, and clergy holding benefices of that Church, who have no private income, and no particular revenues, but only receive daily distributions, are obligated to contribute to the yearly account. Furthermore, the Capitular Constitutions of that Cathedral clearly and simply state that the full fruits of the first year are to be used for the payment of the yearly account, without mentioning any reduction. Therefore, it would seem that the yearly account must be paid even from the daily distributions, whether these are distinct or combined with the private income. However, it should not be forgotten that the Sacred Rota has repeatedly decided, on December 8, regarding benefices, in the decision of November, page 5, in the aforementioned section, and on December 33, regarding sentences and judicial matters, in the ancient texts, decision 5, number 1, paragraph 2, that daily distributions are not to be included in the value of the benefice. Because distributions are uncertain, and therefore cannot be reduced to a certain sum; it is uncertain whether and how often someone can participate in the canonical hours: if a cleric is absent from the Church without fault, indeed for a just cause, such as study or domestic affairs, and receives daily distributions. However, the same Sacred Rota, in the case of Mazanedo, decision 842, number 20, states: "The yearly account must be paid from the fruits, or revenues, of the benefice, as the words of the rescript clearly state, and it is also established by law..." Furthermore, it is not permissible for Canons to acquire these distributions; for it is certain in law that the ability to acquire does not increase the value of a thing, nor does it make anyone richer, as stated in the text in Justinian, Price Regulations, title 1, section 1, and in the Institutes, section 1, section 1, regarding the acquisition of property. Therefore, if distributions are not included in the value of the benefice, and consequently, mention of them should not necessarily be made in its assessment, then for the same reason, the yearly account should not be paid from them.

[*Latin ed. p. 252*]

252 The conclusion stated above gains validity with the passage of time, for in the calculation of the annual payment, daily distributions are not usually included. Therefore, it would seem that, considering that the Cathedral Church should receive a greater share than the Apostolic See, it is reasonable and just that, when calculating the income of a benefice for

Translated by churchlatin.ai, a product of Boyne Archives

the purpose of determining the annual payment, daily distributions should not be included, even though they are distinct from the principal endowment. Furthermore, it does not impede the capitular Constitutions from stipulating that only the pure and simple income of the first year is to be paid for the dowry of the Cathedral Fabric, in obedience and conformity with the Bull of Benedict. Indeed, this Constitution, which demands the annual payment from the fruits of Canonries and other benefices, should be understood to refer to those fruits which arise spontaneously and as if gratuitously from certain endowments, and not to those which depend on daily distributions, namely, from the salary of long-term labor by which one obtains a suitable means of support. This is all the more so because it is the common opinion of the Doctors that daily distributions are not strictly considered as fruits. See Cap. de Praeb. Gemin., cons. 83, n. 23; and Oldradus states that these are owed to the person for the work performed, cons. 118, n. 1. The same opinion was held by the Rota, as testified by Caesar de Grass., decis. 116, alius 3 sub tit. de praeb., n. 1. From the Council of Trent, session 24, cap. 12, de ref., another argument is presented: in it, when it is stipulated that those who are absent from Collegiate institutions for more than three months should, in the first year, be deprived of half of the fruits which they have earned by reason of their benefice and residence, and if they have been negligent, they should be deprived of all the fruits which they have earned in that year, it is added: "Those, however, who have been absent at the prescribed hours, shall receive the distributions; " the word "however" placed adversatively between "fruits" and "distributions" clearly shows a great difference between them. It cannot be said that the cleric, from a benefice and from a canonry, has the right to receive daily distributions; for...

[*Latin ed. p. 253*]

The annual dues of 253, whether pertaining to a canonry or a benefice, are merely an opportunity through which daily distributions can be received, and are not a productive source of income. Or, to put it the same way, the reception of these daily distributions does not arise immediately and intrinsically from the benefice itself, as would be the case with its fruits; rather, it arises from the labor and service rendered to the Church. Therefore, if these daily distributions are not considered as fruits, it would seem that they should not be included in the payment of the annual dues, which must be paid only from the fruits. It should not be omitted that the daily distributions were introduced for the sake of the divine worship, so that it might be increased in the churches, as stated in the Council of Trent, Session 21, chapter 1, concerning reforms: "Since benefices are established for the sake of divine worship and the performance of ecclesiastical duties, so that in no way may divine worship be diminished, but that due obedience be rendered to it in all things, the Holy Synod decrees that in cathedrals

Translated by churchlatin.ai, a product of Boyne Archives

and collegiate churches, where there are no daily distributions, or where they are so meager that they are practically negligible, one-third of the fruits and all revenues and emoluments, whether pertaining to dignities or to canonries, prebends, and offices, should be set aside and converted into daily distributions..." But if the annual dues were also to be paid from these daily distributions, it might be argued that the decree of Trent is superfluous, since it introduced these daily distributions precisely so that divine worship might be increased and due obedience rendered to it in all things. From all of this, it seems that the annual dues owed by Canon Bernard are to be paid only from certain fruits, and not from uncertain ones, or from distributions. In this matter, the certain fruits consist of two parts of the distributions: "Indeed, when payment consists solely of distributions, it is understood that two of these parts should assume the name and nature of a payment, and should take the place of a payment, with all the legal effects, as stated in the decree of the Sacred Congregation in the case of Vaivén, or Sulmona, dated March 21, 1860, § to the second part."

[*Latin ed. p. 254*]

254. Regarding another question, namely, whether the inheritance tax should also be included among the expenses to be deducted in calculating the *media annata*, it was observed. Certainly, all taxes or duties are burdens, and indeed, heavy ones; in this case, this tax is imposed by the government on clerics, and is demanded in full immediately upon entering into possession of the benefice. Therefore, it rightly seems that this tax should also be included among the expenses to be deducted in calculating the *media annata*. Furthermore, it was explored that the *media annata* is to be paid from the fruits [of the benefice]; but the fruits are understood only after deducting burdens and expenses. Regarding this, De Albertis, in *De sacris utensilibus*, chapter 12, paragraph 314, makes a note. And since the discussion concerns the *media annata*, it is fitting to add that, before calculating it, all certain and real burdens must be deducted, among which are also the expenses for furnishings, as we have from the excerpt from the resolution of the Sacred Congregation, taken from the appendix of the Synod of September, from the most noble family of Pieragostini Camerini, page 113, with these words. However, an objection could be raised against the aforementioned: namely, that the tax in question is not a real burden; because it is not demanded from the beneficiary each year, but only affects his person, and is regulated according to his own provision. Therefore, it would seem that it cannot be included among the burdens to be deducted in calculating the *media annata*. It also appears that the Sacred Congregation held a similar opinion, stating that only fixed and real burdens should be deducted in Tiburt, *Med. An.*, May 4, 1754; in which it was decreed: "The *media annata* is to be paid from the fruits received, after deducting fixed and real burdens, but not personal ones, as is clear in the Treasury

Translated by churchlatin.ai, a product of Boyne Archives

resolutions, volume 18, pages 29 and 32." Thus, the aforementioned points, presented on both sides, were intended to raise doubts. I. Whether choral distributions should be included in calculating the income of the benefice, even if they are not distinct from the *praebenda* in this case.

[*Latin ed. p. 255*]

Mediae annatae 255 II. Quaeque onera, et si de facto existentia habeant, in solutione mediae annatae in casu detrahenda sint? RESOLUTIO. Sacra Congregatio, postquam Dilata diu et saepe interrogatus est, tandem die 20 Iulii 1878, censuit de merito quaestionis respondere: Ad I. Affirmative et amplius. Ad II. Deducenda sunt onera fixa et realia, non vero personalia et amplius. Ex QUIBUS COLLIGIS: I. Mediae annatae solutionem, a Benedicto XIII institutam ad Ecclesias Cathedrales et Collegiatas, fuisse ad hunc finem, ut domos Dei, quarum decorem summopere diligendum esse sacra eloquia testantur, temporum iniuria collabi, in peius ruere, et minusque decenter retineri non contingeret. II. Sic Pontificem illum, ut Ecclesiarum decori consulere cupiverat, ita ordinasse, ut nullum beneficium a solvendis mediis fructibus primi anni exemptum sit, praeter Ecclesias paroeciales, quae, una cum incertis annuis redibutis, centum scudos romanos non excedant. III. Huiusmodi mediae annatae solutionem ita pure et simpliciter iussam fuisse, ut nulla in eius detrimentum fieri liceat subtractio, distributionum quotidianarum gratia; sed super istas quoque solutiones ita fieri debeant, ut sint a praebendis distinctae vel cum ipsis coniunctae. IV. Hanc sententiam Sacra Congregatio non solum in proposito, sed pluries secutam fuisse; ita ut in Reatina, die 12 Maii 1770, resolverit, Canonicos aliosque illius Ecclesiae beneficiarios ad mediam solvendam annatam teneri, quamvis praebenda carerent, et quotidianas tantum distributiones acciperent. 1 1 Ratio qua Benedictus XIII singularem sollicitudinem explicuit in subministrandis novis subsidiis ad reparandas istarum Ecclesiarum fabricas, vel eas debito modo conservandas, fuit, quia in Ecclesiis Cathedralibus et Collegiatis, ut ipse dixit, fidelis populus frequentius ad orandum convenire solet.

[*Latin ed. p. 256*]

256. Regarding the calculation of annual averages: Neither is it permissible to deduct personal charges, or those which directly affect the person, in the calculation of the annual average; but only fixed and real charges, which are attached to the benefit, may be subtracted.

VI. In the matter of the inheritance tax imposed by the Italian Government on any benefits provided, and which must be paid in full at one time and not in installments each year, this appears to be a personal charge and not a real one; therefore, it should not be deducted when calculating the benefits.

FROM THE SACRED CONGREGATION OF RITES OF NAPLES. Con-

Translated by churchlatin.ai, a product of Boyne Archives

cerning the cult rendered to the Servant of God, the Holy Bishop of Nostrano, from time immemorial. On April 13, 1878. Summary of the facts. On May 20, 1876, the following letter was sent by the Most Eminent and Reverend Cardinal Archbishop of Naples to the Sacred Congregation of Rites:

"Most Eminent and Reverend Lords,

Considering it just and fitting for religion, and in accordance with the wishes and prayers of the Venerable Sodality of Seventy-Two Priests of Saint Michael the Archangel, as well as from many other priests of this clergy who have presented them to me, I have decreed an ordinary investigation regarding the exception from the Decrees of Pope Urban VIII concerning the cult rendered from time immemorial to the Servant of God, the Holy Bishop of Nostrano. And since the pastoral... "

[*Latin ed. p. 257*]

In Naples, being burdened with numerous concerns, I realized that I would not be able to personally oversee this matter. Therefore, I requested this task of the Most Reverend and Right Reverend Lord Philip Gallo, Archbishop of Patrae Veteres (Patras), in lands outside the faith, and of the Reverend Lords, the Reverend Father James Savarone, Doctor of Theology, and Father Januarius de Rosa, a religious. These individuals willingly and with obedience accepted this duty, and, before me, they swore an oath to properly fulfill this task and to observe the law of silence. Furthermore, they diligently strove to ensure that all matters were conducted in accordance with the Sacred Roman Constitution and the Venerable Decrees of Pope Innocent XI. It remains for me, who know my flock well, to add this: that the Witnesses summoned by the Promoter and other Witnesses and Opponents summoned by office are all of unwavering faith; for these are men held in high esteem by all. In the meantime, etc.». The Judges delegated by the Archbishop of Naples completed the Ordinary Process; and all diligence was employed by them to ensure that all matters were carried out in accordance with the norms prescribed above in this matter; and, after considering all matters of law and fact, they rendered the following judgment: "By this our final judgment, which we have rendered with the counsel of experts in law in these matters, in the cause of Beatification under consideration, we declare, pronounce, and definitively judge that the case regarding the exemption from the Decrees of His Holiness Urban VIII, or concerning the cult rendered to the Servant of God, the Neapolitan Bishop, which has been performed without interruption in the Church of Naples since the fifth century, is established. And so we declare and pronounce, and definitively judge." This question regarding the confirmation of the cult was first resolved by the Judges delegated in the Neapolitan Court, and was then presented, as is customary, to the second judicial seat, to the Congregation of Sacred Rites, under the following formula of doubt:

Translated by churchlatin.ai, a product of Boyne Archives

"Should the judgment of the Judges delegated by the Eminent Neapolitan Archbishop be confirmed in this case and for this purpose?" Regarding such a doubt, a discussion was held between the Defender of the Neapolitan judgment and the Promoter of the Faith, who, by office, supported the opposing side. Acts, volume XI, page CXXV, 17.

[*Latin ed. p. 258*]

Neapolitan 258. A concise account. First and foremost, recalling especially those things pertaining to the life of St. Nostrian, it is related that Nostrian, who shone forth with outstanding holiness and was adorned with apostolic virtues, was entrusted with the administration of the Church of Naples in the fifth century, namely, in a most turbulent age, in which the Roman Empire was overrun by barbarian forces and the Catholic faith was beset by insidious heresies. However, this great man did not consider himself inferior to such a great burden; but he diligently fulfilled the pastoral office entrusted to him with extraordinary care and illuminated it with the splendor of all virtues. DEFENDER OF THE SENTIMENT OF NAPLES. Among the outstanding works which he accomplished, while attending to the care of those entrusted to him, John the Deacon recounts that he built a bathhouse at his own expense for the clergy and the people, so that the faithful, cleansed in body and soul, might approach the sacred rites. Thus, he emulated the piety of St. Peter, the Roman Pontiff, who erected monuments for the good of the Catholics in the City. To this provident care was added the inexhaustible charity of Nostrian, by which he received with hospitality those confessors of the faith driven from their regions by the barbarity of the Vandals, and assisted them with all kinds of care. Among these, the historians mention St. Gaudiosus, the Bishop of Bithynia, who, together with faithful priests, was driven to Naples and most graciously received by St. Nostrian, and who adorned that city with heroic virtues, and acquired the most deserving honors of sanctity. Furthermore, in combating the Pelagian heretics, the Venerable Man displayed the utmost zeal of faith and a desire for the purity of its preservation. For not only did he bravely oppose Florus, who was attempting to lead a certain people to false doctrines, and expelled him from the city; but also, together with St. Prosper of Aquitaine, he vigorously contended against Julian, a most ardent follower of the Pelagian heresy, the Bishop of Iulianum.

[*Latin ed. p. 259*]

Neapolitana 259. Thus, Our Blessed Man, as a good soldier of Christ, governed the Neapolitan Church for seventeen years, until, outstanding in pastoral virtues and full of the Lord, he rested in peace, renowned for his sanctity. After these things, the Defender proceeds to demonstrate that the judgment of the judge, delegated by the Most Reverend Neapolitan Archbishop, must be confirmed by the solemn judgment of the Holy Office,

Translated by churchlatin.ai, a product of Boyne Archives

and that the cult offered to God's Servant Nostrianus from time immemorial must be confirmed. In this matter, in order to serve both order and clarity, he first presents the most ancient documents, which are recounted by historians and witnesses presented in this cause, concerning the public and ecclesiastical cult rendered to Nostrianus; and then he adds those which extend from the fifteenth century to our own age. And with regard to the most ancient monuments of the cult, he first mentions that which arises from the place of the tomb. Indeed, it is known that in the fifth century of the Church, only the bodies of the Saints were buried in the basilicas and temples. And it is clear from history that such a testimony of sanctity was rendered to Saint Nostrianus. For it is known that Saint Gaudiosus, having erected a pious hermitage outside the city walls, where access was open to Christians to venerate the relics of martyrs resting in the catacombs, took care that the mortal remains of Nostrianus should be buried in the church or chapel of this hermitage with due honor to the holy man. A notable witness to this is John the deacon, in whose chronicle these words are read about Nostrianus: "Who, having performed good works in the Lord, rested (that is, according to the manner of speaking in antiquity, he died with a reputation for sanctity) and was buried in the church of Saint Gaudiosus." Furthermore, the fact that the faithful venerated Saint Nostrianus with exceptional devotion is shown by the fact that his remains were buried in a more distinguished place in the cemetery and were held in equal honor with Saint Gaudiosus. Indeed, it is also deduced from reliable arguments by the most skilled experts in Christian archaeology that an altar was erected near these remains. Another indication of the ancient cult is taken by the Defender from the episcopal cathedra, which is used to perform the sacred mysteries with Saint Gau-

[*Latin ed. p. 260*]

260. In Neapolitana, Nostrianus est veneratus in eius Ecclesia. Haec enim, ab antiquis temporibus religiosa, adhuc veneratur in Ecclesia, quae super vetus coemeterium aedificata est, et a B. Maria Virgine "Sanitate" appellata est; in qua legitur inscriptio: "Sedes functionum Episcopalium, quam S. Nostrianus Episcopus Neapolitanus et S. Gaudiosus Episcopus Bithyniensis, et alii Praesules, in his Christianorum Coemeteriis dedicarunt." Tertium, et quidem praeclarissimum, documentum publici cultus, Defensori suppeditat, translatio exuviarum S. Nostriani a veteri S. Gaudiosi Ecclesia ad Diaconiam S. Ianuarii ad Ulmum, loco illo sitam, ubi S. Antistitis balneum propriis sumptibus aedificavit; quae translatio, etsi non scitur quo anno facta sit, tamen indubie demonstratur peracta vel saeculo x labente, vel exordiente xi. Etenim non nisi Sanctorum corpora ex suburbanis coemeteriis, uti primum tumulata fuere, extrahi et in catholicarum urbium ecclesiis fidelium venerationi exponi consueverunt, sive ut a barbarorum impietate illaesa servarentur, sive quia placidum

Translated by churchlatin.ai, a product of Boyne Archives

erat fidelibus sacra avitae religionis pignora propius venerari. Hanc demonstrationis vim adauget solemni eiusdem translationis pompa, cuius perenne monumentum in posterorum memoriam pertransiit, via scilicet et platea, quae ad Ecclesiam aditum pandit, nomine S. Nostriani insignita; ipsaque vetus Diaconia passim tum Sancti Ianuarii, tum quoque Sancti Nostriani appellatione distincta. Accedit quod pretiosum eius corpus sub maxima illius templi ara digniori loco marmorea urna repositum fuit, et divinum sacrificium tot labentibus saeculis ad nostram hanc usque aetatem super eius ossibus celebratum. Iam vero tantummodo super Sanctorum corpora arae venerandaque religionis mysteria celebrantur. Hinc ubi alia non suppeditaret solemnis cultus demonstrandi ratio, altare ipsum quod Antistitis reliquias suscepit, erectum aetate ab ipsis Urbanianis decretis valde remota, aptissimum esset tum ad cultus antiquitatem, tum ad eius haud interruptam ad nostra haec usque tempora progressionem ostendendam.

[*Latin ed. p. 261*]

Neapolitana 261. Having become a defender of the faith, and following the established order, he presented arguments concerning the cult from the fifteenth century to our time, and, first of all, he referred to the double recognition of the body of St. Nostrianus, which took place during the time of the Urbian prescription; as a result of which, the sanctity of the Servant of God, which had been neglected by many at that time, was brought to the attention of the citizens of Naples with a new light of miracles. In the year 1854, Cardinal Hannibal Capuanus, Archbishop of Naples, during his visitation of the Church of St. Januarius at Ulm, received a report (as can be read in the records of the visitation) from the parish priest and the confratres of a certain pious society of seventy-two priests, established under the title and patronage of St. Michael the Archangel, which had its seat in that parish, that "under the main altar, the body of a certain Saintly Man was kept, as they said according to ancient tradition." And indeed, "under the same altar, an ark made of marble was found, filled with ashes and bones, along with some remnants of cloth." The ark with the relics was placed back under the altar. However, in the year 1612, when the aforementioned confratres wished to build a larger choir, which required the old altar to be remodeled, it happened that the relics of St. Nostrianus were again brought to light. As the most accurate historian of Neapolitan affairs, Chioccarellus, narrates: "In the Church of St. Januarius, a certain ancient marble box was found in the main altar on August 16, 1612, when His Eminence, Cardinal Octavius Acquaviva, presided over the Church of Naples, in which were preserved the sacred remains and entire bones, and in which were inscribed, in Lombardic letters carved in marble, the words: 'The Body of St. Nostrianus, Bishop.'" In this second recognition of the Holy Body, it pleased the Most High to recall the sanctity of His Servant

Translated by churchlatin.ai, a product of Boyne Archives

to the memory of the faithful, through a certain wondrous sign. For, as Chioccarellus himself testifies, who was present at the recognition, "such a fragrant odor emanated from his bones that one would think it was not a human, but rather a heavenly odor, and all were astonished." Before the glorious remains of St. Nostrianus were placed under the restored...

[*Latin ed. p. 262*]

262 In Naples, the altar was adorned, and the illustrious head, separated from the rest of its body, was enclosed in a precious reliquary of gold and silver, and was exposed for public veneration on the solemn day of the commemoration of Saint Nostrianus. From that time onward, the cult of Saint Nostrianus began to increase with extraordinary splendor of ceremonies. Indeed, the memory of the discovery of his sacred body was annually celebrated on a fixed day by a pious society of seventy-two priests, with its own Office and Mass, accompanied by magnificent ceremonies and a large gathering of the people. Later, this society transferred the celebration to the Church of Saint Michael; although the splendor of the ceremonies for the commemoration of Saint Nostrianus was diminished, the cult of the Saint did not cease; rather, it remained intact in the church of Saint Januarius, and through the efforts of that pious society, it was also established in the sacred edifice of Saint Michael. That pious society is accustomed to expose each year, upon the altars, the precious relics of the head of Saint Nostrianus, which it carries with it in a gilded reliquary, together with an image of the Saint, with rays emanating from his head. Furthermore, in the same place, the Defender adduces further arguments for public veneration, which pertain both to the past and to our own time. The most important of these are the following: fervent prayers addressed to Saint Nostrianus, invoked for protection in public calamities; the commemoration of Saint Nostrianus, as a heavenly patron, included in the prayers of the pious society of seventy-two priests; solemn processions in which the relics of the Saint were accustomed to be carried through the most frequented streets of the city, for the needs of the faithful; images of Saint Nostrianus, one of which is venerated in the Diaconia of Saint Januarius, and the other in the cathedral church, among the bishops of that diocese; and finally, images with rays and splendor, printed by the pious society of Saint Michael since the year 1874, and widely distributed among the faithful. Therefore, concludes the Defender, it is not surprising that the Holy See, having witnessed such a display of public cult, has, in the past century, decreed the commemoration of the Saint.

[*Latin ed. p. 263*]

The Neapolitan [author] has received the booklet of the pious confraternity with eager ears; if, by an authentic decree, abundant indulgences are to be granted to the faithful on the feast of Saint Nostrian; if, moreover, all

Translated by churchlatin.ai, a product of Boyne Archives

the most celebrated authors, from the ninth century of the Church to our own times, universally call him by the name of "saint."

****OBSERVATIONS OF THE PROMOTER OF THE FAITH.****

Against what has been argued up to now by the defender of the Neapolitan opinion, the Promoter of the Faith presents the following:

Firstly, he contends that John the Deacon reports that no ecclesiastical cult is indicated by the place of Nostrian's burial, stating that he was buried in the church of Saint Gaudiosus; that is, as the first witness explains among many adduced, in one of the galleries of the catacombs.

However, it is established by the authority of Benedict XIV, *Liber V*, part II, chapter 29, number 87, that not all the bodies of Christians were buried in the catacombs, but rather the bodies of the Saints: for the cemeteries, or catacombs, in the five preceding centuries of the Church, constituted common burial places for the faithful.

Granted, however, that the place of Nostrian's burial was truly a chapel, or a church. Nothing is thereby inferred. For, as Devoti notes in *Institutiones Canonicae*, book II, Title I, chapter X, § II, note 5, it was customary in the fourth and fifth centuries for bishops to be buried in churches. To prove this, he adduces, for the fourth century, the example of Ambrose, who prepared a burial place for himself beneath the altar in Milan; and for the fifth century, the letter of Pulcheria of Augsburg to Saint Leo the Great, from which it is clear that the body of Flavius, Bishop of Constantinople, was buried in the Basilica of the Apostles, and in which those same letters state, "it was the custom for the predecessors of the bishops to be buried there."

The same custom was observed in Gallus and in other parts of the Christian world, as the *Catalanus Commentarius* to the Roman Pontifical, Volume II, Title VI, on the blessing of cemeteries, teaches. Therefore, nothing was done concerning the body of Nostrian that deviated from the customary practice of that time.

Furthermore, with regard to the episcopal chair attributed to Nostrian, the Defender of the Faith observes, from the inscription that is read upon it.

[*Latin ed. p. 264*]

264 It is established that, besides Saint Nostrianus and Saint Gaudiosus, other prelates also adorned it. Since this chair belonged both to saints and to non-saints, it is not entirely clear what indication of the veneration of Nostrianus can be derived from it. These are only a few things, the Promoter of the Faith adds, that are known about the tomb of Nostrianus and the beginnings of his cult. However, from that time, that is, from the 5th century until the end of the 16th century, there are no monuments or histor-

Translated by churchlatin.ai, a product of Boyne Archives

ical records concerning the veneration paid to him. It happened that in the year 1584, during the visitation of the Church of Saint Januarius in Naples, the Archpriest reported that the body of some saintly man was being kept under the altar of that church. However, no one knew who this was, nor was it known at that time; and only on August 16, 1612, was an inscription revealed on a marble chest, carved in Lombardic letters, which revealed the name of Nostrianus. Then the zeal of scholars arose to investigate, from ancient monuments, not only the deeds of Nostrianus, but also the epoch and the causes of his translation; concerning which, however, since all the monuments of the city of Naples were silent, and not even a memory existed in the very temple of Saint Januarius, they were forced to indulge in conjectures, which were more or less plausible. Some seek an indication of this translation in ancient documents, which give the name of Nostrianus to a street that leads to the entrance of the Church of Saint Januarius. However, it must be remembered that this place was built by Nostrianus himself, at his own expense, as a bath. Therefore, this explains the origin of the name of that street, and there is no need to resort to the translation of his remains. Rather, what is derived from ancient monuments is this: that in the 9th century, John, the Neapolitan Prelate, translated the bodies of Saint Gaudiosus and Saint Januarius into the city; while Nostrianus, who had shared the same place of repose with them, was left behind. Therefore, at that time, he did not enjoy the same commendation of sanctity and the devotion of the faithful as the aforementioned saints. Likewise, John mentions this in his marble Calendar.

[*Latin ed. p. 265*]

In Naples, among the holy men whom the city of Naples venerated publicly, the name of Nostrianus was not inscribed. The promoter of the faith, still insisting, presents the following objection: it is uncertain as to the time or the cause by which the translation occurred; but that it did occur at some time, it cannot be denied. He replies that, according to tradition, the body of some saint is preserved beneath the great altar of St. Januarius; but that the remains of the Bishop of Naples, Nostrianus, are those, as is required for the present matter, tradition does not attest; which, at least, is required to prove the identity of the relics, according to Jo. Ferrandus, *Disquisitio de Reliquiis*, Book I, Chapter XII, Section 2. Indeed, an inscription is revealed, which, however, was not initially read; and finally, someone interprets the deformed letters. Who this person is, or whether he has acted correctly, is unknown. The inscription, in fact, is now lost; therefore, it could not be judicially examined by experts. Finally, he observes that, according to the legitimate introduction of cult, from Benedict XIV, Book II, Chapter 23, number 11, it requires "knowledge and tolerance of the Apostolic See or the Ordinary." But where is the intervention of ecclesiastical authority, either in the deposition of the body of Nostrianus, or in its translation, or

Translated by churchlatin.ai, a product of Boyne Archives

in any act whatsoever that could be referred to public worship? Therefore, he concludes that, although it is granted that, in the year 1612, the cult of Nostrianus flourished, this can establish possession, but not prescription, which, according to the Decrees of Urban, must be demonstrated from the year 1534 with irrefutable documents. If, however, we speak of a later age, the censor admits that more indications of the cult exist; among which, however, he refuses to include the Pontifical Rescript of January 10, 1761, which grants certain indulgences for seven years on the feast of the Holy Martyrs Januarius, Nostrianus, and Lucius, because it cannot be said to have been issued deliberately by the Supreme Pontiff. For it is only known that Nostrianus could have been included, not among the saints, but among the martyrs. Furthermore, he observes that all the signs of the cult introduced later were not long-lasting.

[*Latin ed. p. 266*]

In Naples, it is said that for some time, the celebration of Mass and the recitation of the Office in honor of Saint Januarius ceased; also, the lamp that shone upon his tomb was no longer lit; and the parish priest of the Church of Saint Januarius himself testified that the custom of lighting candles before the statue of Saint Januarius on certain feast days had been discontinued by him, in order to maintain symmetry in the arrangement of the church. Furthermore, witnesses state that some signs of veneration still exist, especially in the Cathedral, where, among other Neapolitan bishops considered saints, is venerated a marble "protomes" of Saint Januarius. But such statues, placed outside the altar and intended only as ornamentation, contribute little or nothing to the worship of the Servants of God. Also, witnesses recount that in the Church of Saint Michael, to which the aforementioned Pious Society of the Clergy frequently moved in the year 1729, an image of Saint Januarius was displayed on August 23rd, and that some prayers were offered in their gatherings in his honor. But these prayers, being private, cannot be considered as public worship; and this exhibition, it should be noted, lacks any proven scientific basis and tolerance from the Ordinaries; indeed, from the records of pastoral visits, which have been diligently carried out by so many vigilant prelates from the year 1729 to the present, not a single word is found that suggests such a thing.

RESPONSE OF THE DEFENDER TO THE PROMOTER'S OBSERVATIONS. The Defender, approaching each point of the Promoter's objections in detail, responds to the first one as follows: Even if we accept the testimony of the first witness, namely that the body of Saint Januarius was buried in the cemetery of the Monastery of Saint Gaudiosus, that is, in one of the corridors of the catacombs, still, the first monument of veneration would still be present in the very most important place, where the sacred remains were laid. Indeed, as the third witness, a man of great authority in Sacred Archaeology, demonstrates with weighty reasons, it was fitting

Translated by churchlatin.ai, a product of Boyne Archives

for the excellent Bishop to have a small chapel, marvelously decorated, with an altar where the divine mysteries are celebrated. Whatever the case, concerning the FAITH.

[*Latin ed. p. 267*]

In Naples, 267, concerning the aforementioned opinion of learned men and the place in which the Church of Saint Gaudiosus arose, it is certainly known from the notable testimony of John the Deacon that the relics of Saint Nostrian were placed in the church after his death. However, the Defender continues, not all prelates, indeed not all, but only those men distinguished by heroic virtues, whether they were bishops or even laymen, were honored with such a burial place, as ecclesiastical history confirms. The example of Ambrose, which John the Devout brings forward in opposition, is not relevant to the matter. For the circumstances were different in both cases; indeed, the citizens of Naples, remembering Saint Nostrian after he had attained his heavenly homeland, bestowed upon him the honor of an ecclesiastical tomb; whereas Ambrose, still living, desired a place of burial in the Basilica of Milan out of devotion. However, it is clear that only holy men were permitted to have a place in the ecclesiastical tomb at that time, as is evident from the hidden relics of the Martyrs Saints Gervasius and Prothasius, which were placed in the same tomb, and as the eminent Doctor expressed it on that occasion, "I had destined this place for myself, but I yield the right portion to the sacred victims." The other examples cited from the same Devout, rather than contradicting the matter, confirm it. For he first mentions the letter of Pulcheria of Augsburg to Saint Leo; from which it is known that the body of Bishop Flavius of Constantinople was buried in the Basilica of the Apostles. But who does not know that Flavius was a man of religion and piety, although he illuminated his see with heroic virtues? Indeed, the same letter states, "in which the predecessors of the bishops were accustomed to be buried." But who can these be, unless they are the Saints Mestrophanes, Alexander, Paul the Martyr, Maximian, Proculus, and so many other illustrious men, who preceded Saint Flavius? The same must be said of the custom observed in Gaul and other parts of the world, namely, that bishops distinguished by holiness were buried in the temple. As for the marble seat given to Nostrian, from which the Defender does not see what indication of worship can be derived.

[*Latin ed. p. 268*]

268 The Defender observed that, although other bishops of the city of Naples may have resided there, nevertheless, the memory of Saint Nostrian and Gaudiosus is preserved in the church of the Blessed Virgin, and they are honored with equal sacred relics; just as the ancient Basilica of the Saints Nereus and Achilles preserves the chair of Saint Gregory the Great, because of the memory of that pontiff, although perhaps other Ro-

Translated by churchlatin.ai, a product of Boyne Archives

man pontiffs may have presided there in the same sacred mysteries. After considering the origins of the public veneration bestowed upon the Saint, the Defender proceeded to those matters which, as pertaining to the time of the prescription of Urban VIII, are more closely related to the case. At first, the Censor conceded that it is not easily possible to find historical documents from the 5th to the 16th century concerning the cult paid to Saint Nostrian, since the testimony of John the Deacon, mentioned above, concerning his sanctity, dates from the 9th century. Although, in the subsequent centuries, up to the discovery of the Saint's relics, no explicit mention of Saint Nostrian is found, nevertheless, the tradition remained intact, that the body of some holy man is preserved in the main altar of the church of Saint Januarius; and it is certain that for the course of many centuries, the faithful have venerated him as a holy man, whose remains rest there, and upon which divine mysteries have been celebrated. Since these sacred relics pertain only to Saint Nostrian, as was demonstrated after his discovery; and also, in the centuries preceding the centennial prescription of Urban VIII, it is clearly evident that public veneration was paid to him. Therefore, it matters little at what time the marble inscription placed upon the urn was clarified, and the name of Saint Nostrian was revealed. To what the Censor adds, that the histories and monuments of the city of Naples are silent concerning the translation of Saint Nostrian, the Defender replies with the very event of the translation itself. For it is certain that the translation was made; indeed, the Saint's relics were discovered after many centuries, beneath the larger altar of the church of Saint Januarius, a place certainly very different from the original burial mound. Such an event is a clear testimony of public veneration.

[*Latin ed. p. 269*]

Neapolitana 269 establishes. Therefore, once the force of the argument is derived from the translation, it matters little at what time the aforementioned translation occurred, although learned men, guided not by slight conjectures, but by solid reasons, demonstrate that it took place either towards the end of the tenth century or at the beginning of the eleventh. The document for this translation, namely the street leading to the Church of St. Januarius, distinguished by the name "Nostrianus," is obtained from *Fidei Vindice*; for the reason for this appellation, rather than from the translation itself, should be sought from the baths constructed in that place by St. [Episcopus]. But let [the Defensor] explain, he asks, why, although Nostrianus had already erected baths in the fifth century, and the Diaconate of St. Januarius had already been founded by St. Agnello, the street and the adjacent roads were not marked with that name until the eleventh century? Let it be that the reason for the name was derived from the baths constructed; but further, something must be explained that accounts for the adoption of the appellation in the eleventh century: and this is best

Translated by churchlatin.ai, a product of Boyne Archives

explained by the perfect translation of the holy relics at that time. The two arguments that follow in the Censor's observations, the Defensor shows, are of no value. For if *Fidei Vindice* wished to accomplish anything contrary to the established demonstration, he would have had to prove that all the relics of the Blessed, which enjoyed public veneration in that age, were translated from the suburban cemeteries by Bishop John, and that the Calendar compiled by the same prelate exhibited a complete list of the saints of the Neapolitan Church. But as for the first, it is clear from history that only the bodies of some of the saints were translated at that time. And this is not surprising; for some were translated in an earlier age, and some in a later age, as the faithful showed greater devotion to one or the other, or as danger threatened from the incursions of the barbarians. As for the second, it is clear from the fact that not all the saints venerated publicly in the city of Naples are listed in that Calendar, that among the others, the names of the saints, the Bishops Epitimiti, are not included.

[*Latin ed. p. 270*]

270 In Naples, it is known that the sacred relics of those individuals were transferred by the same Prelate, John, from the suburban cemeteries, along with the relics of other holy men. Therefore, it is not surprising that the name of Saint Nostrianus was omitted, since his translation had not yet occurred. And since the Defender of the Faith was still striving to obtain the foundation for the translation of Saint Nostrianus, the Accuser, using the same arguments requested by Ferrandus, asserted that the holy relics, which were said to be kept under the main altar of Saint Januarius, belonged to Saint Nostrianus. Indeed, to demonstrate the identity of the holy relics, Ferrandus required "a suitable and fitting presumption, and a constant tradition." Certainly, it was a suitable and fitting presumption that the remains of Saint Nostrianus had been transferred to that place, where the monuments of his generosity were located. It was also a constant and ancient tradition that the relics of the holy man were kept under the main altar of the Church of Saint Januarius. This tradition, of course, remained general and undefined until the 15th century, but then it became specific when a marble inscription referring to the name of Saint Nostrianus, after a long period of obscurity, finally came to light. However, the authenticity of this inscription was challenged, with the argument that it had not initially been read. But what then? Later, it was recognized, and the miracle confirmed the authority of its interpretation. Perhaps it will be said that it no longer exists, or that it could not have been judicially recognized by experts? However, its truth is confirmed by the authority of the most distinguished historians, and by the public solemnity of the sacred rites of the city of Naples, restored by the authority of the Prelate. Finally, the Defender demonstrated that knowledge and tolerance were necessarily to be presumed in the Ordinary in this case, based on the teaching of Benedict

Translated by churchlatin.ai, a product of Boyne Archives

XIV. For, as that Pope teaches, such knowledge and tolerance can not only be found in tradition and documents, but also in presumption; indeed, as he rightly notes in Book II, chapter 23, paragraph II, "Ordinary prelates are presumed to know what is happening in their own dioceses." Certainly, the body of Saint Nostrianus could not have been transferred and venerated under the main altar unless the knowledge and tolerance of the Ordinary prelates had been present; indeed, unless their authority had intervened.

[*Latin ed. p. 271*]

Neapolitana 271 Having overcome the difficulties, and having obtained a prescription for the cult, the Defender easily refutes those things which pertain to the possession of that cult. And first, he proves that the Pontifical rescript granting certain Indulgences on the feast of Saint Nostrianus should not be rejected by others, because the assertion of the Accuser contradicts the very formula of the rescript. For it is such that it manifestly declares that it proceeded in the audience of the Roman Pontiff. For there it is not written that these indulgences were granted through certain faculties, but, "from the Audience of the Most Holy [Pope]." It begins with "The Most Holy Lord Pope Clement XIII, bowing his head to the prayers of the Orators, etc.," and ends with these words: "And His Holiness wished to grant this grace without any Brief being issued." Therefore, the formula is such that it entirely excludes the aforementioned indulgences from having been issued by an unauthorized Pontiff. Furthermore, the Defender shows that the other objections of the Accuser are of no weight. For it is not the case that all signs of public veneration have endured with the same splendor throughout the passage of time. What then? This alone is sufficient: namely, that the public cult of Saint Nostrianus has always been exhibited, and, above all, that within the greater altar of the Church of Saint Januarius at Ulmo, the precious relics of the Saint have remained until our time, and that divine mysteries have been celebrated upon them, which fact constitutes an undeniable argument of public veneration. And although, when the cult was transferred to the temple of Saint Michael, the worship of Saint Nostrianus in the Church of Saint Januarius was carried out with less pomp, nevertheless it was then, for the first time, that the aforementioned Congregation established the cult in the temple of Saint Michael; indeed, even there the glorious Prelate's relics were transferred, enclosed in a silver reliquary. Therefore, if the cult appeared diminished in reason of solemnity, it increased in reason of extension. As for the marble image of Saint Nostrianus, which is in the Cathedral Church, the Defender observes that, although...

[*Latin ed. p. 272*]

272 The [practice] should serve the adornment of the temple, and, among other things, the images of the Pastors of the Church of Naples

Translated by churchlatin.ai, a product of Boyne Archives

should be admired, thereby rightly and deservedly providing evidence of public veneration. Regarding the other objection, the Defender responds that, whatever the nature of the prayers that are customarily offered in general meetings of pious confraternities, it is certain that the intercession of Saint Michael is sought by the confreres who, among the heavenly patrons, are venerated in the sacred dwelling of the pious confraternity; therefore, the aforementioned prayers can rightly be considered as a certain declaration of public veneration, by which the Saintly Prelate has been honored from the most ancient times. Finally, concerning the exposition of the relics, the Defender observes that, after the aforementioned confraternity was transferred to the Church of Saint Michael, no pastoral visitation has been carried out in that temple; therefore, the absence of pastoral visitations can only be attributed to a lack of activity. Furthermore, from the foregoing, it is clear that ecclesiastical authority has intervened in the recognition and public exposition of the sacred relics. Therefore, the attempt by the Censor to obtain evidence of public veneration in this matter is futile. The Congregation of Sacred Rites, after carefully considering all that has been presented on both sides, confirmed the judgment of the Judges delegated by the Most Reverend Archbishop of Naples with its authority through the following DECREE. In the Ordinary Meeting of the Congregation of Sacred Rites, held on the aforementioned day at the Vatican, with His Eminence and Most Reverend Cardinal Dominic Bartolini presiding over the case, the following Question was proposed: "Whether the judgment of the Judges delegated by the Most Reverend Archbishop of Naples, concerning the veneration offered to the aforementioned Servant of God from time immemorial, or concerning the exception in the Decrees of Pope Urban VIII, should be confirmed in this case and with effect regarding what is being discussed?" The Most Eminent and Most Reverend Fathers, entrusted with the preservation of the Sacred Rites, after carefully examining everything, and after hearing the voice and written opinion of the Reverend Father Dominic Lawrence Salvati, Promoter of the Holy Faith,

[*Latin ed. p. 273*]

The Neapolitan Fathers considered it necessary to respond: "To affirm, or to confirm the opinion." On April 13, 1878. These matters, faithfully reported to His Holiness, Pope Leo XIII, through the undersigned Secretary, were approved and confirmed by His Holiness. On May 2 of the same year. Fr. Thomas M. Cardinal Martinelli, S.R.C., Prefect. L. © Placidus Ralli, S.R.C., Secretary. Acts, volume XI, page 126, number 18.

[*Latin ed. p. 274*]

LETTER FROM HIS HOLINESS, POPE LEO XIII, TO THE MOST EMINENT CARDINAL NINA, SECRETARY OF STATE. August 27, 1878.

Translated by churchlatin.ai, a product of Boyne Archives

Most Eminent Lord,

A grave misfortune struck, and Our soul was filled with deep sorrow by the unexpected death of Cardinal Alessandro Franchi, Our Secretary of State. Called to so high an office because of the trust that He had inspired in us, due to his uncommon gifts of mind and heart, and the long services he had rendered to the Church, he so fully corresponded to our expectations in the short time that we had him at our side, that his memory will never be erased from Our mind, and his name, among the present as well as among those to come, will remain dear and blessed.

LETTERS FROM THE MOST HOLY FATHER, POPE LEO XIII, TO THE MOST EMINENT CARDINAL NINA, SECRETARY OF STATE. August 27, 1878.

Most Eminent Lord,

The unexpected death of Cardinal Alessandro Franchi, Secretary of State, brought about great sorrow, and filled the mind of Our spirit with sadness. Called to this distinguished office, due to the esteem that we held for him; because of his noble gifts of mind and heart, and the long services rendered by him to the Church, he was able to respond so abundantly to our expectations, in the brief time he stood at Our side, so that his memory will never depart from Our mind, and his name will be blessed among those present, as well as among those to come.

[*Latin ed. p. 275*]

Apostolic Letters. Since, moreover, the Lord wills that we be subjected to this trial, We, with humble spirit reverencing the divine counsels, immediately turned all Our thoughts to the choice of a successor, and fixed Our eyes upon you, Most Eminent Cardinal, whose singular prudence in affairs, steadfastness of purpose, and spirit of generous sacrifice, by which you are honored in favor of the Church, are well known to Us. However, it seemed fitting to Us, before entrusting you with this new office, to write this letter to you, so that We might open Our mind to you concerning certain matters of the greatest importance, to which your diligent attention must be particularly directed. From the very first days of Our Pontificate, from the height of the Apostolic See, We turned Our gaze upon this society, moved by the desire to know its conditions, to investigate its needs, and to devise appropriate remedies. And from that time, in Encyclical Letters written to all Venerable brothers in the Episcopate, We lamented the decline of truths, not only supernatural, known by faith, but also natural, both speculative and practical; the prevalence of most grievous errors, and the grave danger to which society is exposed by the ever-increasing disorders by which it is disturbed. We declared that the most powerful cause of so much ruin is the proclaimed separation, and the attempted apostasy of this society from

Translated by churchlatin.ai, a product of Boyne Archives

Christ and His Church, in which alone true virtue exists.

[*Latin ed. p. 276*]

276 Apostolic Letters alone are the virtue that suffices to repair its most grievous damages. In the light of the clear facts, we showed then that the Church, founded by Christ to renew the world, from its very first appearance among men, began to offer it great comfort through its supernatural virtue, and that in the most dark and calamitous times, it was the only beacon that pointed out the safe path, the only refuge that promised tranquility and salvation. From this, it was easily inferred that if, in times past, the Church was able to bring forth such great benefits on earth, it can, without fail, also accomplish the same in the present; that the Church, as every Catholic holds by faith, animated always by the spirit of Jesus Christ, who has promised it His unfailing assistance, was constituted a teacher of truth and a guardian of a holy and immaculate law, and as such, it possesses even today all the power to oppose the intellectual and moral corruption that afflicts society, and to restore it to health. And since very cunning enemies, in order to bring the Church into disrepute and to make the world hostile to it, spread grave calumnies against it, We, from the very beginning, made it Our concern to dispel prejudices and to refute accusations, certain that the peoples, having come to know the Church, as it truly is, and its benign nature, would willingly return to its bosom from every side. Moved by such intentions, We wished to make Our voice heard also by those who govern the affairs of nations, urging them fervently.

[*Latin ed. p. 277*]

Apostolic Letters, 217, should not be refused, especially in these times when the need is so pressing, the most valuable support that the Church offers. And spurred by Apostolic charity, We turn also to those who are not united with Us by the bond of the Catholic religion, desiring that even their subjects may experience the beneficial influences of this divine institution. You well know, Most Reverend Cardinal, that in order to further these impulses of Our heart, We also addressed the powerful Emperor of the illustrious nation of Germany, which, due to the difficult conditions imposed on Catholics, particularly called for Our concern. And those words of Ours, born solely from the desire to see religious peace restored to Germany, were favorably received by the august Emperor, and produced the good effect of leading to friendly negotiations; in which We were not intending to achieve a mere truce that would leave the way open to new conflicts; but to establish, once the obstacles are removed, a true, solid, and lasting peace. The importance of this goal, rightly appreciated by the wise judgment of those who hold the reins of that empire, will, We trust, lead them to give Us a benevolent hand in achieving it. The Church would undoubtedly rejoice to see peace restored to that noble nation; but the empire itself would rejoice

Translated by churchlatin.ai, a product of Boyne Archives

no less, if, in these circumstances in which necessity urges, it found the firmest support from the Church. But, spurred by Apostolic charity, We have also taken the same steps with those who are not bound to Us by the bond of the Catholic religion, desiring that even their subjects may experience the beneficial fruits of this divine institution. You are not unaware, Most Reverend Lord, that in order to follow these impulses of Our mind, We have also addressed the powerful Emperor of the illustrious nation of Germany, which, due to the difficult conditions under which Catholics are oppressed, particularly called for Our solicitude. And Our words, born solely from the desire to see religious peace restored to Germany, were received with a favorable spirit by the august Emperor, and produced such a good result that friendly negotiations were held; in which We were indeed concerned to ensure that simple peace terms were not established, which would leave the way open to new conflicts; but that, once the obstacles are removed, a true, solid, and lasting peace would be established. The gravity of this goal, rightly perceived by the wise judgment of those who hold the highest power in that empire, will, We believe, lead them to offer Us a friendly hand in achieving it. Without doubt, the Church would rejoice to see peace restored to that noble nation; but the empire itself would rejoice no less.

[*Latin ed. p. 278*]

278 Apostolic Letters have often shown that the children of the Catholic Church are the most faithful and most generous subjects. Neither could our paternal vigilance overlook the regions of the East, in which the most serious events that are taking place there, perhaps prepare a better future for the interests of the Religion. Nothing will be omitted by the Apostolic See to favor them; and a sweet hope smiles upon us that the illustrious Churches of those regions may finally return to a fruitful life, and shine with their ancient splendor. These few remarks reveal to you sufficiently, my Lord Cardinal, our intention to widely extend the beneficial action of the Church and the Papacy throughout all of modern society; it is necessary that you also devote all your diligence and use your talents to carry out this plan that God has placed in our heart. Furthermore, you must give your most serious attention to another matter of the highest importance, namely, the very difficult situation created for the Head of the Church in Italy and in Rome, after it was deprived of the temporal dominion that Divine Providence had granted it for so many centuries to protect the freedom of its spiritual power. It is not right to remain silent when the violation of the sacred rights of the Apostolic See in Rome and the Pope, gravely harms the good of the people; for, when they have seen that the ancient and sacred rights have been violated with impunity in the very person of the Vicar of

Translated by churchlatin.ai, a product of Boyne Archives

Christ, the ideas of justice and equity will be deeply affected among

[*Latin ed. p. 279*]

Apostolic Letters 279. We do not wish to dwell here on the fact that the violation of the most sacred rights of the Apostolic See and the Roman Pontiff is fatal even to the well-being and tranquility of the peoples, in whom, upon seeing the most ancient and most sacred rights impunely violated in the very person of the Vicar of Christ, the idea of duty and justice is deeply shaken, respect for the laws diminishes, and even the very foundations of civil society are overturned. Nor do we intend to detain you further in considering that the Catholics of the various states will never be tranquil, until their Supreme Pontiff, the Master of their faith, and the Arbiter of their consciences, is surrounded by true freedom and real independence. However, we cannot refrain from observing that, while our spiritual power, by reason of its divine origin and supernatural purpose, and in order to exercise its beneficial influence in favor of human society, must enjoy full freedom; on the contrary, under the present circumstances, it is so hindered that it becomes extremely difficult for us to govern the universal Church. This is a well-known fact, and it is confirmed by daily events. The solemn complaints made by our predecessor, Pope Pius IX, of blessed memory, in the memorable consistorial allocution of March 12, 1877, can, with equal reason, be repeated by us, with the addition of no slight grievances, due to the new obstacles placed in the way of the exercise of our supreme power. And indeed, we must complain, as did our illustrious predecessor, concerning the abolition of religious orders, which deprives the Pontiff of a valuable source of assistance for the Holy Congregations, to which the greatest affairs of the Church are entrusted; we must also lament that ministers are taken away from the divine service, as far as the military are concerned.

[*Latin ed. p. 280*]

280 We must lament, as did our illustrious Predecessor, not only the suppression of religious orders, which deprived the Pontiff of a valuable aid in the Congregations where the most important affairs of the Church are dealt with; but we must also grieve that ministers are taken away from the divine service by the law concerning military recruitment, which compels all, without distinction, to serve in the armed forces; that institutions of charity and beneficence, established in Rome, either by the Roman Pontiffs or by Catholic nations, which placed them under the supervision of the Church, are taken away from Us and the clergy; and, with immense sorrow in our heart as father and pastor, we are compelled to see with our own eyes the progress of heresy in this very city of Rome, the center of the Catholic religion, where, without impunity, numerous heretical temples and schools are erected, and we must observe the corruption that follows, especially among a large part of the youth to whom a faithless instruction

Translated by churchlatin.ai, a product of Boyne Archives

is given; but, as if all this were not enough, efforts are being made to render vain the very acts of our spiritual jurisdiction.

It is well known to you, Lord Cardinal, how, after the occupation of Rome, in order to partially appease the consciences of Catholics deeply concerned about the fate of their Head, public and solemn declarations were made promising to leave the appointment of Bishops to the various sees of Italy entirely to the Pontiff, so that tranquility might be restored to the consciences of Catholics agitated about the condition of their Head. Then, under the pretext that the acts of the canonical institution of Bishops were not to be subject to royal approval, and that, moreover, the revenues of the benefices were denied, the Apostolic See was subjected to grave expenses.

[*Latin ed. p. 281*]

Apostolic Letters 281, and subsequently, under the pretext that the acts of their canonical institution were not submitted to governmental review, not only were the newly invested denied the revenues of their benefices, thereby causing a very grave expense to the Apostolic See, which was compelled to provide for their sustenance; but, with very grave detriment to the souls entrusted to their care, even the acts of episcopal jurisdiction issued by them were not recognized, such as appointments to parishes and other ecclesiastical benefices. And when, in order to remedy these very grave evils, the Apostolic See tolerated the presentation by newly elected Bishops of Italy of the Bulls of appointment and institution, having been carried out according to the canons, nevertheless the condition of the Church did not become more tolerable; for, despite this pretended presentation, for frivolous reasons, the revenues were continued to be denied to many Bishops, and their jurisdiction was not recognized. Those who are able to achieve their purpose see their requests subjected to very lengthy delays, and are passed from one office to another; and respectable men, distinguished by virtue and doctrine, judged by the Pope to be worthy of holding the highest positions in the ecclesiastical hierarchy, are forced to endure the humiliation of being subjected to secret and minute investigations, as if they were suspicious and vulgar people. The same Venerable Brother, whom We appointed to administer, in Our name, the Church of Perugia, although already holding the government of another Diocese, and legally recognized therein, has, after a long time, still been waiting in vain for a response. And thus, with unhappy shrewdness,

[*Latin ed. p. 282*]

282 Apostolic Letters, legally recognized, have been awaiting a response for a long time, still in vain. Thus, with unhappy cunning, what was ostensibly given to the Church with the right hand for political reasons is taken away from it with the left. To make the situation even more seri-

Translated by churchlatin.ai, a product of Boyne Archives

ous, in recent times, the rights of royal patronage have been asserted in several dioceses of Italy, with such exaggerated claims and such odious measures, that the Most Venerable Our Brother, the Archbishop of Chieti, is not only contradicted in his jurisdiction by a judicial declaration, but his appointment is also declared invalid, and his very episcopal character is refused recognition. It is not our intention to dwell on demonstrating the non-existence of such rights, which, moreover, is acknowledged by many even on the opposing side. We merely wish to recall that the Apostolic See, to which the provision of bishoprics is reserved, has not been accustomed to grant the right of patronage except to those princes who have deservedly benefited the Church, defending its rights, promoting its expansion, and increasing its patrimony; and that those who oppose it, impugning its rights and appropriating its resources, thereby become, according to the canons, incapable of exercising it. The facts we have touched upon so far clearly indicate the intention of continuing in Italy a system of ever-increasing hostility against the Church.

[*Latin ed. p. 283*]

Apostolic Letters, page 283, are addressed to the Church, and clearly demonstrate the sort of freedom that is reserved for it, and the respect with which the Head of the Catholic Religion ought to be surrounded. In this most deplorable state of affairs, My Lord Cardinal, we do not ignore the sacred duties that the Apostolic ministry imposes upon us; and with our eyes fixed on Heaven, and our hearts comforted by the certain hope of divine help, we shall strive never to fail in them. And you, whom our trust has called to participate in our most important concerns, contribute, as did your illustrious predecessor, your steadfast and intelligent efforts to the fulfillment of our designs, certain that our assistance will never fail you. In the meantime, as a pledge of our particular affection, receive the Apostolic blessing which we impart to you from the depths of our heart. From the Vatican, August 27, 1878. LEO XIII.

*in dies crescentis, clariusque ostendunt quodnam libertatis gemis, eidem reservetur, quonamque respectu Religionis Catholicae Caput circumvenit debeat. Tnfando in hoc rerum statu, Eme Domine, haud sacra ignoramus onera, quae Nobis Apostolicum imponit ministerium ; oculisque in Coelum defixis, animo autem certa divini auxilii spe suffulto, ut numquam eisdem deficiamus sedulam dabimus operam. Tu vero, quem Nostra fiducia in partem maximarum sollicitudinum Nostrarum vocavit, confer, ceu tuus sollers Antecessor, constantem atque intelligentem operam tuam, ut Nostra impleantur consilia, securus quod numquam Tibi defutura sit adsistentia Nostra. Excipe nunc, ceu pignus singularis Nostrae praedictionis, Apostolicam benedictionem, quam Tibi ex intimo cordis impertimur. Ex

Translated by churchlatin.ai, a product of Boyne Archives

Aedibus Vaticanis, die 27 augusti 1878. LEO PP. XIII.*

[*Latin ed. p. 284*]

FROM THE HOLY CONGREGATION OF THE COUNCIL CONCERNING THE APPLICATION OF THE SECOND MASS. THROUGH SUMMARY PRAYERS. On September 14, 1878. Summary of the case. The Bishop N. in Gallia, stated that, since the year 1842, a Congregation of Priests of Saint Joseph had been established in his Diocese, endowed with an Indulgence by the Holy See, whose members are obliged to celebrate Mass once, for each deceased brother priest. The Priests, to whom it is permitted to say two Masses on Sundays and feast days, have offered the second Mass for the deceased brother priests, believing that they could do so with a safe conscience. However, when a doubt arose concerning such a manner of acting, the Ordinary inquired: whether a Mass of obligation can be offered, as in this case, for deceased confreres. Synopsis of the discussion. According to the Constitution of Benedict XIV, "Cum semper oblatas," and from the constant discipline of the Holy Council, it is clearly established that it is forbidden to a Parish Priest or any other Priest to repeatedly offer Mass, so that he may receive an alms for the application of the second Mass. The reason for this constant decision lies in the fact that any payment must be removed from the sacred rites; and therefore, not only the direct receipt of alms for the application of the second Mass, but also any pretext for receiving alms, and any indirect receipt of the same, must be avoided. ARGUMENTS IN OPPOSITION. See the case reported, Vol. IX, page 297 and following.

[*Latin ed. p. 285*]

Concerning the application of the second Mass, 285. Having laid down these principles, it appears that a priest cannot apply the second Mass for deceased confreres, because, whether directly or indirectly, he seems to receive alms, since, when applying the Mass for a deceased confrere, the priest fulfills an obligation to which, if he did not fulfill it himself, someone else would have to pay a stipend in order for the Mass to be celebrated, to which he himself is bound by giving his name to the aforementioned association, or at least would lose the alms of the Mass. Therefore, by applying the second Mass, he would at least be sparing something from his own resources, and thus indirectly receive alms.

ARGUMENTS IN FAVOR. On the other hand, it must be considered that, by applying the second Mass for deceased confreres, the priest does not receive alms, either directly or indirectly. Not directly, because he receives nothing in the act itself; not indirectly, because he is bound to apply it not by the bond of justice, but by the bond of charity. Therefore, since no prohibitive law is found that forbids applying the second Mass for one's own devotion, or for one's deceased relatives or souls in Purgatory, it seems

Translated by churchlatin.ai, a product of Boyne Archives

that nothing prevents applying the sacrifice for the benefit of the soul of a deceased confrere. It is well known in law that that which is permitted is considered that which is not forbidden by law.

Having considered these matters, the prudent Eminences were left to consider what response should be given to the proposed question. The Sacred Congregation of the Council, after deliberation, considered it appropriate to respond on September 14, 1878: "It is permissible."

RESOLUTION. From the foregoing, it is gathered: I. That even in this veiled and subtle manner, the greatest weight remains with the Sacred Congregation of the Council, and with the disposition of Benedict XIV in the Constitution *Cum semper oblatas*, namely, that the priest cannot receive any alms for the second Mass, either directly or indirectly.

[*Latin ed. p. 286*]

Regarding the application of the second Mass, section II: The reason for this established prohibition is so that all avarice, and indeed any suspicion of mercenary dealings, may be kept away from sacred things. Section III: The principal intention of the one who arranges [the Mass] (which must always be considered when applying the law) is that greater consideration should be given to the strengthening of ecclesiastical discipline, rather than to the benefit of the clergy. Section IV: In no way, whether directly or indirectly, may alms be received by priests who are offering the second Mass for deceased brethren; therefore, it is permissible for them to do so: because no law prohibits anyone from offering the second Mass for those towards whom they are not bound by the law of justice, but only by the bond of charity.

1. On several occasions, the Holy Congregation of the Council has interpreted the Constitution *Benedictus XIV*, and has maintained the same practice regarding the prohibition of receiving alms for the second or third Mass, as the Pontiff speaks of in that document. The Holy Congregation gave an example of this rigor in the *Trevirensi eleemosyna* of March 23, 1861, which was reported in Volume I, page 13. It was stated that the celebration of the second Mass was being done with great inconvenience, and that the custom was that alms for this second Mass were received from certain benefices; nevertheless, the Holy Congregation decreed that only a certain remuneration, in consideration of the labor and inconvenience, might be permitted by the prudent judgment of the Bishop, excluding any alms for the application of the Mass.

[*Latin ed. p. 287*]

FROM THE CONGREGATION OF THE INDEX: DECREE. Tuesday, the 16th day of September, 1878. The Sacred Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the Most Holy Lord our Pope Leo XIII and the Holy Apostolic See, concerning

Translated by churchlatin.ai, a product of Boyne Archives

the condemnation of books of false doctrine and their prohibition, expurgation, or permission, throughout the Christian Republic, having met in the Apostolic Palace at the Vatican on the 1st day of July, in the year 1878, condemned and condemns, prohibits, and orders that the following works be referred to the Index of Prohibited Books:

Gioia, Giovanni Battista, Cavaliere, Professor. *Esposizione critica della Genesi*. Rome, Mugnoz Printing, 1877.

Scholl, Aurélien. *Le procès de Jéstis-Christ*. Paris, Maurice Dreyfous, Publisher.

Larroque, Patrice. *Religion et Politique, études supplémentaires et lettres précédées d'une notice biographique*. Paris, Calman Lévy, Publisher, 1878.

Giacomo (P.), of the Most Holy Heart of Mary. *Nuovo Saggio intorno all'azione di Dio sulla libertà dell'uomo secondo la vera dottrina di S. Tommaso*. Naples, Printing of the Royal Academy of Physical and Mathematical Sciences, 1877. Decree of the Holy Office, Tuesday, the 14th of August, 1878.

Giacomo (P.). *Il nuovo Saggio intorno all'azione di Dio, ecc., difeso dall'Autore*. Naples, Printing of the Academy.

[*Latin ed. p. 288*]

Decree 288, sciences, etc., 1878. Ibid. Decree. The Author commendably subjected himself and his work to examination. Therefore, no one, of whatever rank and condition, should dare to publish, or, having published, to read or retain the aforementioned works, in any place, and in any language, but rather they are bound to deliver them to the Ordinaries of the places, or to the Inquisitors of heretical perversity, under the penalties indicated in the Index of Prohibited Books. These matters, related to Me, the undersigned S.I.C., were brought to the attention of His Holiness, Pope Leo XIII. His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome, on the 20th of September, 1878. Fr. THOMAS MARIA Cardinal MARTINELLI, Prefect. L. S. Fr. Hieronymus Pius Saccheri, Ord. Praed., S. Ind. Congregation, of Secret Affairs. On the 24th of September, 1878, I, the undersigned, Master of the Curia, testify that the aforementioned Decree was affixed and published in the City. Philippus Ossani, Mag. Curs.

[*Latin ed. p. 289*]

Brief of Leo XIII, 289. Most Holy Father Leo XIII, Pope, by this Brief, approves and declares authentic the edition of the Gradual of Rome, which is now completed, as well as the Antiphonary and Psalter, which are now being prepared, by Mr. Frederick Pustet.

Translated by churchlatin.ai, a product of Boyne Archives

LEO PP. XIII.

TO OUR DEAR SON, GREETING AND APOSTOLIC BENEDICTION.

It has always been the concern of the Supreme Pontiffs to promote the dignity of the sacred rites, and especially to provide for the uniformity of the Gregorian chant. Therefore, with particular benevolence and praise, We have favored those men who have contributed the support of the art of typography to the accurate publication of books for the choirs of the Church of Rome, in order to promote this most beneficial institution of ecclesiastical chant.

Our Predecessor, Pope Pius X, did not hesitate to do the same with you, Our Dear Son, since, being distinguished with the title of Typographer of the Supreme Pontiff and of the Congregation of Holy Rites, you have successfully completed the most accurate edition of the so-called Gradual of Rome, according to the norms prescribed to you by the aforementioned Congregation of Holy Rites.

Now, with equal zeal and diligence, you have undertaken to complete the work that was begun by our blessed predecessor, Pope Paul V, by preparing an edition of the entire Antiphonary and Psalter, with the chant, according to the aforementioned norms, and with that order which prevails in the Roman Court. Since a part of this work, containing the hours of the day, has now been completed, it is certainly fitting that we commend your care and industry in this matter.

"Therefore, we approve the aforementioned edition, which has been reviewed by learned men of the Church, experts in chant, appointed for this purpose by the Congregation of Holy Rites, and we declare it authentic, and we earnestly commend it to the Most Reverend Ordinaries and to all those who are concerned with Sacred Music, especially with the intention that in all places and dioceses, the same and identical order may be observed, both in other matters pertaining to the Sacred Liturgy, and also in the chant, as is used by the Church of Rome."

Furthermore, we confirm by these Letters all the rights and privileges that have been granted to you by this Holy See, through the Congregation of Holy Rites, for the editions of ecclesiastical books that you have completed, and, if necessary, we will grant them again, as a certain pledge of Our benevolence. We impart to you, and to all yours, Our Apostolic Blessing.

Given at Rome, at St. Peter's, under the Fisherman's Ring, on the fifteenth day of November, in the year 1878. In the first year of Our Pontificate.

[Signed]

Pr. D. Card. ASQUINIO.

L. S. D. Jacobini, Substitute.

Translated by churchlatin.ai, a product of Boyne Archives

Acta, vol. XI, p. 126.

[*Latin ed. p. 290*]

FROM THE HOLY CONGREGATION OF RITES, NETENSI. PRINCIPAL PATRONAGE. April 13, 1878. Summary of the case. In the year 1874, the Chapter of the Collegiate Church of Saint George in the city of Mothuca presented the following petition to the Holy Father. "From the most remote times, when Roger, the hero, liberated Sicily from the Saracens, Saint George has been venerated as the principal patron of Mothuca. The Collegiate Church, the Mother Church of this city, which was formerly part of the Syracusan Diocese, is now subject to the Diocese of Netensi. As the devotion of this people to the Saint Martyr grows daily, the Congregation of Sacred Rites, by decree of July 2, 1661, at the request of the Chapter, granted to the secular and regular clergy of this city the faculty of reciting the proper prayers and readings of the same Saint, according to the double rite, with an octave. At this time, when the enemies of the Christian name are daily increasing in ferocity, who not only attack the cult of the Saints..."

A longer exposition of this case is provided, since the peculiar nature of the question seemed to warrant a more extended discussion. Especially so, because this is the first case of its kind to come before us since the beginning of our publication. Furthermore, the gravity of the sanctions under discussion, and the absolute totality of the numbers involved, due to the multiplicity of questions, demanded this approach. To better illustrate this, we have included certain documents, namely decrees issued by the Holy Congregation of Rites on the subject. Moreover, because of these decrees, and also because of the names of illustrious historians of Sicily whose writings we have used, it was necessary to indicate, contrary to our custom, both the place of the controversy and the names of those who were arguing.

[*Latin ed. p. 291*]

Noto, April 29. "But they attacked the very divinity of Jesus Christ; nevertheless, the love and devotion of this people towards St. George has increased, who, through his intercession, awaits the triumph of the Church. Therefore, for the greater glory of God and the edification of the faithful, and also to satisfy the devotion of this people and to further inflame it, we have, after due consideration, presented this petition to Your Holiness. We humbly request that Your Holiness deign to declare that the 23rd of April, on which the feast of St. George is celebrated, should be observed as a holy day of precept, for this city and territory, just as it is in the city and territory of Ragusa."

Such petitions, supported by numerous signatures, were presented. On February 4, 1874, the Bishop of Noto, writing at the end of a pastoral letter during the Sacred Visitation, stated: "The undersigned Ordinary testifies

Translated by churchlatin.ai, a product of Boyne Archives

to the truth of what is stated above, and believes that, given the singular devotion to the holy Martyr George, it is fitting to grant indulgences to the city of Mothucae, so that that day may be sacred and festive, and observed with due reverence."

Those who had made the petition rejoiced, and on April 30 of the same year, the Congregation of Sacred Rites issued a decree, after deliberation, granting the following: "That, in the city of Mothucae alone, the feast of St. George may be celebrated on the 23rd of April, as a holy day of precept, that is, with the observance of the holy day and the abstinence prescribed."

The text of the decree of April 30, 1874, is presented below:

"The Chapter and Canons of the Collegiate Church of the City of Mothucae, within the limits of the Diocese of Noto, together with the rest of the clergy and the people, are so devoted to St. George the Martyr, the titular saint of the aforementioned Collegiate Church, and the principal patron of this city, that, with the most humble prayers, they have earnestly implored our Most Holy Lord Pope Pius IX, that in the same city and its territory, the feast of St. George itself, which falls on the 23rd of April, may be celebrated as a holy day of precept, that is, with the observance of the holy day and the abstinence prescribed."

"Furthermore, Your Holiness, having received these petitions from the Most Reverend Bishop of Noto, with a special commendation from the community, and having been informed by the undersigned Secretary of the Sacred Congregation, has graciously granted the following: That, in the city of Mothucae alone, the feast of St. George may be celebrated on the 23rd of April, as a holy day of precept, that is, with the observance of the holy day and the abstinence prescribed."

[*Latin ed. p. 292*]

292. The Canons of the Collegiate Church of Saint Peter at Riez, whose rivalry with the Chapter of Saint George had intensified since the beginning of the seventeenth century, over certain rights of patronage, which they claimed belonged to them as much as to the Church of Saint George, received this decree with a troubled spirit. And although the Congregation of Rites had already, since the year 1636, through judicial decisions of May 24th and September 6th, decreed solely in favor of Saint George the right of patronage, and although the Supreme Pontiff Innocent XI, in his Apostolic Letters, issued on June 4th, 1698, had confirmed these same judicial decisions and ordered them to be observed, nevertheless, due to continued disputes instigated by them, in the year 1757, the Canons of Saint Peter obtained a Royal Decree, by which, setting aside pontifical authority, perfect equality between both churches was established. Therefore, fearing that, through this single Patron, Saint George, they might suffer some detriment from this equality, they sent a petition to Rome, which follows:

Translated by churchlatin.ai, a product of Boyne Archives

"We, the undersigned, Canons of this Mother Church of Saint Peter the Apostle, and of the Collegiate Church of Saint Mary of Bethlehem, together with the priests attached to the lower clergy of this city of Mothucae, declare: that we have had no part, nor have we subscribed, in the petition by which the majority of the clergy and people of this city have requested that the feast day of Saint George the Martyr, April 23rd, be celebrated as a holy day by order, based on the false assumption that this Saint is the patron of the entire city of Mothucae. Adhering to this Mother Church and to our glorious Patron, Saint Cataldus, whom we have always venerated as such before the year 1655; in which year, through a decree issued, the Patron of the entire city of Mothucae was declared to be Saint Cataldus; (and this decree has been followed by several subsequent judgments of the Monarchy and Royal Decrees, which, in their entirety, perfect the present state of equality and independence, before the execution of this present Decree in the chancery of the Episcopal See of Neten, notwithstanding any objections whatsoever). - April 30th, 1874. - To the Most Reverend and Reverend Lord Cardinal, Prefect of the Congregation of Holy Rites: C. Card. Di Pietro."

[*Latin ed. p. 293*]

Noto. 293 "Since both Churches have expressly stipulated that no title or claim should be asserted which would carry with it patronage or precedence, we consider it reasonable and necessary to publish the present declaration, so that the Holy See may eliminate any claim or distinction between the two Churches, which would lead to questions and discord; therefore, let it be declared null and void any decree issued based on the false supposition that Saint George the Martyr was declared the patron of the entire city of Mothuca; and let all effects and consequences that would arise from such a decree be annulled. In order that it may not be objected that a new privilege has been requested through a new petition, we declare that in this case, proceedings must be followed according to the decree of Urban VIII, issued in the year 1630 and still in force, which requires the universal suffrage of the clergy and the people for the establishment of patronage. But all of these things are irrelevant to the subject matter. The following signatures of the clergy, however, completely demonstrate the contrary."

After certain preliminary provisions and for very serious reasons, the Congregation of Sacred Rites, having obtained permission from the Pontiff to speak, declared on June 19, 1877, that the decree of April 30, 1874, was suspended with regard to its effects, granting the parties involved the faculty of formally asserting their rights regarding the question of patronage.

1. Therefore, an agreement between the two parties took place for the purpose of resolving the question; one concerning the opening of mouths, the other concerning the principal patron of Mothuca, namely Saint George.

Translated by churchlatin.ai, a product of Boyne Archives

1. Regarding the provisional decree of June 19, 1877: "Noto. - From ancient times, a serious controversy has arisen among the inhabitants of the city of Mothuca, which previously belonged to the Diocese of Syracusana, and which now belongs to the Diocese of Netensi, concerning who should be the principal patron of that city: while some attribute this honor to Saint George the Martyr, others attribute it to Saint Cataldo the Bishop and Confessor. However, since the Sacred Congregation of Rites wrote in favor of Saint Cataldo on June 19, 1700: 'Let the Orators be instructed about the legitimate election of Saint Cataldo as patron,' it seemed that the matter would rest. But after, through the Decree of the same Sacred Congregation of April 24, 1874, at the request of the Most Reverend Benedict La Vecchia Guarneri, then Bishop of Netensi, it was established, the Feast... "

[*Latin ed. p. 294*]

294 •Noto. Concerning the martyrs and the holy Bishop Cataldus, and also concerning the subsequent execution of the decree of April 30, 1874, by which, as we have mentioned, a feast of precept was granted for St. George. A synopsis of the discussion. THE RIGHTS OF THE CHAPTER OF ST. PETER. When, for the first time, a doubt arose concerning the opening of the church, the customary formula was used: Whether the decision concerning the opening of the church is contrary to the decree of April 30, 1874? The advocate for the actor in the case argued: that it clearly does belong to the decision concerning the opening of the church, because "by the subsequent decree of June 19, 1877, the parties in dispute were granted the faculty of bringing their rights, concerning the question of patronage, through the proper form, and the doubt concerning the opening of the church arises from a special indulgence granted by the Pope." He also argued that the right to grant the opening of the church belongs in the case, because the rescript in question, when brought into consideration, is tainted by deception and fraud. He asserted that it is false that St. George has been venerated from ancient times as the patron of St. George in the aforementioned city, and that both feasts should be celebrated, that is, the holy day, and abstaining from servile work; but the controversy flared up again, and with such fervor that, during the month of April of the current year, very serious acts occurred. The Most Reverend D. Benedict La Vecchia Guarneri, as soon as he perceived the dissension of spirits, declared the aforementioned decree of April 30, 1874, suspended, and appealed to the Congregation of Sacred Rites, so that it might provide for the matter. While the Sacred Congregation was seeking further information from the Bishop, and wrote to him, so that he might know what course of action should be taken, it happened that he himself was transferred to the Metropolitan Church of Syracuse, and John Blandini succeeded him in Noto. This man completed the information requested by his predecessor, and earnestly urged the Sacred Congregation to resolve the controversy; but since the matter still appeared obscure and

Translated by churchlatin.ai, a product of Boyne Archives

complex to the Sacred Congregation, so that it could prudently render judgment, it was again written to the Bishop of Noto. But scarcely had he fulfilled the task entrusted to him, when the controversy itself was settled on the aforementioned day in the Sacred Congregation of Rites. After hearing the report made by the undersigned Secretary, and after mature deliberation and consideration, after hearing the parties, either orally or in writing, present their rights, the following was decided:

[*Latin ed. p. 295*]

Noto, 295. Concerning the principal patron of the city of Mothuca: and this is evident from documents which demonstrate that Saint Cataldus is the true principal patron of Mothuca. It is false that the clergy and the people are said to hold such a strong devotion to Saint George that they vehemently request that his feast day be celebrated on April 23rd, under both precepts, with attendance at the Holy Mass and abstinence from servile works. Proof of this false assertion is found in the very protestation and prayers of the Chapters of Saint Peter and Saint Mary of Bethlehem, which are appended to the introduction of this judgment. Indeed, a rescript obtained through deceit or surreptitiously is null and void by law, as stated in Gregory IX, Decretal I, chapter XX, which states: "Therefore, we consider that a distinction must be made between those who, through fraud and malice, and those who, through simplicity or ignorance, obtain letters from us, so that those who, in the former manner, express or suppress the truth, may, for the punishment of their perversity, obtain no advantage from such letters." The first part of the second doubt: Whether Saint George the Martyr or Saint Cataldus the Bishop is the principal patron of the city of Mothuca, contained a double question: or rather, a single question divided into two parts, since the rescript decreed: "The Congregation for Rites vehemently disapproves of the disturbances, with grave damage to religion and scandal to the goods, which have been stirred up in the Church of Saint George the Martyr in the city of Mothuca this year in April, and declares: The decree of April 30th of the year 1874 has been suspended and remains so, giving the parties the right to bring their claims regarding the question of patronage before this Holy Order through the proper legal process; meanwhile, imposing silence regarding the very question of the principal patron of the city, which is reserved for definition by the Holy Congregation, it orders that Saint George the Martyr and Saint Cataldus the Bishop be considered as special patrons, each for his respective parish and district. And so it decreed and ordered to be observed. On June 19, 1877." We add to the provision of the Holy Congregation, the Pontifical decree regarding the opening of the oral hearing, as required by office. "Decree. - From the Audience of His Holiness. July 19, 1877. - His Most Holy Lord Pope Pius IX, upon the report of the undersigned Secretary, in the controversy that arose among the inhabitants of the city of Mothuca

Translated by churchlatin.ai, a product of Boyne Archives

in the Diocese of Noto, concerning the principal patron of the same city, granted the opening of the oral hearing, and notwithstanding the rescript of April 30, 1874, benevolently approved that the same principal saint be recognized and defined in an Ordinary Congregation of the Holy Rites. - Piae. Ralli, Secretary of the Holy Rites."

[*Latin ed. p. 296*]

No. 296, concerning the matter to be discussed. And indeed, the advocate of the Canons of Saint Peter, who asserted the patronage of Saint Cataldus, attempted to demonstrate this, basing his argument on the fact that, according to the decree concerning the appointment of Saints as Patrons, issued by the Most Holy Congregation on March 23, 1630, under the mandate of Pope Urban VIII, the appointments of patrons made in previous times, observed from time immemorial, are in no way invalidated. Furthermore, recognizing that the execution of the enacted law must take place in the future, according to the provisions of the same decree, and therefore does not nullify already made appointments, the Holy Congregation of Rites itself affirmed this in the document "De Patronatu" in Troia, on June 13, 1633, and in Pamplona, concerning the patronage of Saint Francis Xavier, thus presenting an authentic interpretation of the aforementioned decree. After these points, the definition of patronage was derived from the work "Heortologia sive de festis propriis locorum et Ecclesiarum" by Guyeto, Book I, Chapter VII, question I, which states: "A patron of a place is to be considered that Saint who, either through perpetual custom and tradition received from the ancestors, or by law..."

1 "The decree concerning the election of Saints as Patrons, issued by the Holy Congregation of Rites, by order of His Holiness Pope Urban VIII, on March 23, 1630. - The Holy Congregation of Rites, with the approval of the Most Holy Father, has decreed that the following must be observed in the future concerning the appointment of Patrons, declaring that otherwise, the election is invalid by law itself. Firstly, that only those Saints who are venerated by the Universal Church can be chosen as Patrons, and not merely the Blessed. Secondly, that the election of the Patron of a City must be made by secret ballots by the people, through the general council of that City or Place, and not solely by officials, and that the consent of the Bishop and clergy of that place must be obtained. The same must be observed for the Patron of a Kingdom, who must likewise be elected by secret ballots by the people of the individual Cities of the province. And that representatives of the Kingdom, City, or province have no power to elect Patrons, unless they have a special mandate for this purpose, and furthermore, the consent of the Bishop and clergy of those Cities must be obtained. And thirdly, that the reasons for the election of new Patrons must be presented to the Holy Congregation, and examined by it, and after being made known, approved and confirmed by the same Congregation. And

Translated by churchlatin.ai, a product of Boyne Archives

so that the ignorance of the foregoing may never be alleged at any time, the aforementioned Holy Congregation ordered that the aforementioned decree be printed and published."

[*Latin ed. p. 297*]

After the election had been held, a particular intercessor before God, and one who is properly venerated and invoked by the entire clergy and people of that place, is observed and honored. Having stated these premises, he proceeded to demonstrate the fact, and in order to show that Saint Cataldus was already the Patron before the decree of Urban VIII, he recounted that in the year 1480 and before, his feast day had been celebrated by order in Mothuca, on the tenth of May, with sacred rites to Saint Cataldus. He also presented documents to support this, including marriage announcements held on the tenth of May of the years 1619 and 1623. He also recounted that in the year 1555, a dispute arose concerning the custom of singing the hymn "Te Deum" on the feast of Saint Cataldus, and that the Bishop of Syracuse ruled in favor of the custom against the treasury, which had taken the side of the opposing party. Finally, he stated that there was a church dedicated to Saint Cataldus within the castle of the Counts of Mothuca. On May 1st, it was stated that in the year 1627, the magistrates of Mothuca asserted that they had previously had Saint Cataldus as their only Patron; then, in the year 1629, they decreed that the feast of Saint Cataldus should be celebrated with greater solemnity; and that in the same year, 1629, when the councilors of the municipality were asked to declare whether Saint Cataldus had been, was, and would always be the patron of Mothuca as long as the city and its people endured, they unanimously responded, affirming that they wished Saint Cataldus to be the patron as they had had him up to that point, and that, if necessary, they would choose him as their patron. From this election, which preceded the decree of Urban VIII, the entire matter concerning Guy and the place is as follows: Who is properly called the patron of a place? I say "properly called," as is understood in the rubrics, where it is often read: "Patron of the Place or Church," and not, as is commonly thought, for those Saints who flourished in a certain place during their lifetime, or whose memory is venerated there in some way, for whatever reason, and who are therefore considered as the patrons of that place, as will be declared in the following examples; for that meaning has nothing to do with the divine office and the sacred rites (which is the sole purpose of our institution). But the patron of a place is properly that Saint who, either through perpetual custom and tradition received from the ancestors, or through a legitimately made election, is regarded as a particular intercessor before God, and is properly venerated and invoked

Translated by churchlatin.ai, a product of Boyne Archives

by the entire clergy and people of that place.

[*Latin ed. p. 298*]

298. The existence of the patronage of St. Cataldus was undeniably established. This established existence received new strength in the year 1631, when, at the request of the magistrates and prominent citizens of the city, who stated that the cult of St. Cataldus had flourished for two hundred years, the Vicar General of the Syracusanae Diocese responded on May 6, 1631: "Let it be preserved as it has been preserved hitherto, as the patron of the city." However, in the year 1629, a particular circumstance occurred: when the Vicar General of the Syracusanae Diocese presented a report to the Congregation of Holy Rites, stating that in the city of Mothuca, the relic of St. Cataldus, Bishop and patron and protector of that city, was venerated, and that his feast day was celebrated with solemnity, with Mass, and with a solemn procession with the aforementioned relic, and that he had requested that it be declared what should be done in the future; the Holy Congregation responded: "Let it be preserved as it has been preserved hitherto." The orator placed the greatest emphasis on the decree of the Syracusani Bishop Capobianco, published during the course of the visitation on February 2, of the year 1655, in which, in order to comply with the aforementioned law of Urban VIII and to designate a single patron, among the four patrons of Mothuca, namely the Blessed Virgin Mary, St. Rosalia, St. George the Martyr, and St. Cataldus the Bishop, that Bishop declared the last-mentioned Saint as the patron of the city of Mothuca, and decreed that he should be venerated as such in the future. The continuation of the cult of St. Cataldus was evidenced by: 1) edicts concerning the procession of St. Cataldus; 2) a report from the Syracusani Bishop, sent to the Congregation of Holy Rites around the year 1689, in response to a petition from Didaci Carrera, the Major Chaplain of the Church of St. Cataldus, for permission to recite the proper office of that Saint; 3) announcements of marriages; 4) testimonies from certain long-lived citizens of Mothuca who declared that, until the year 1818, the feast day had been observed by law on May 10th. It is not surprising (he added) that the feast day ceased to be observed by law after the year 1818: this was done for reasons.

[*Latin ed. p. 299*]

Paragraph 299 of the Constitution of Pope Pius VII, issued for the Neapolitan jurisdiction, which decreed that "on the feast days of the principal patrons of individual cities, towns, and places, to which the precept of abstaining from servile labor has been attached, the observance, along with the respective offices and Masses, shall be transferred to the nearest Sunday." However, Benedict XIV teaches that the perseverance of devotion is of the greatest importance, as stated in *De Canonis Sanctorum*, Book 2, Chapter 10. But despite this law having been enacted,

Translated by churchlatin.ai, a product of Boyne Archives

the patronage of St. Cataldus continues to be observed, as evidenced by the festivities held today, as well as in past times, on the occasion of his feast day. It was concluded: all the requirements for St. Cataldus, as designated by the aforementioned learned Pope, for establishing his patronage, are present; namely, the immemoriality of the cult, its continuation, and the confirmation by the Apostolic See or the Ordinary. Although, with regard to this last requirement, the Pope has used a distinction, nevertheless, both can be considered present; provided that the decrees of many Bishops preceded the response of the Holy Congregation of Rites, sent in the year 1620 to the Vicar General of the Syracusan Diocese. Finally, the demonstration of the patronage of St. Cataldus was completed by refuting the opposing patronage of St. George. Two main points were presented in favor of St. George: 1) the decree of the Holy Congregation of Rites, issued on July 2, 1661, which granted both the secular and regular clergy of the city of Mothuca the faculty of reciting the proper office of St. George, the Martyr, patron and titular of that church, with the *octava*; 2) the response given by the same Holy Congregation on June 19, 1700, to the prayers of Didacus Carrera, Chaplain Major of the Church of St. Cataldus. Regarding the first point, it was argued that the decree of July 2, 1661, had no bearing on the question of patronage. Indeed, in the same decree, the faculty was granted "to recite the office of St. George, Martyr, patron and titular of the same church, under the rite..."

[*Latin ed. p. 300*]

300. It may be recited with a double octave. "The prayers and readings for the feast day, etc., may be recited with a double octave." Indeed, if the concession pertains to St. George, the patron and titular saint of the church, it does not follow that St. George's patronage extends over the entire city; for patronage is restricted to the church. And truly, the patron of a place differs greatly from the titular saint of a church, as is explained by Guyet, *Op. Cit.*, book 1, chapter 8, question 2. Nor is it beneficial that a faculty has been granted in the decree to recite the office twice with an octave: for Gavantus teaches, Section 3, chapter 12, number 4: "Whether it is for the principal patron or for the titular church, the office is to be recited as a double of the first class, as is stated in the rubrics concerning commemoration, number 3. Also, the octave is to be observed for both, as is stated in the rubrics concerning the octave, number 1. And whatever is prescribed for a double of the first class and for the octave, the same must be granted to the principal patron of the place in his place, and to the titular saint in his church. For the reason for the solemnity is the same in both." Finally, from the concession of a proper office, nothing follows that would be beneficial to the subject matter of the chapter concerning St. George, as is shown from the practice of the Holy Congregation, which generally does not grant a proper office even to patrons, for the sake of piety. Lastly, it is

Translated by churchlatin.ai, a product of Boyne Archives

not to be considered of any value the appellation of "Most Holy Patron," which some historians have used for St. George. For Gavantus (Section 3, chapter 12, number 2) says: "Some call patrons those to whom devotion is directed solely by affection, not by common devotion to the entire city or place." Regarding the second objection, it is true that Didaco Carrera, who requested that it be permitted to recite the proper office to the Diocese of Tarentum for St. Cataldus, already granted, received this response from the Holy Congregation of Rites on June 19, 1700: "Let them show us the 'legitimate election' of a patron, and the faculty to recite the office 'de communi'." However, this kind of response does not prejudice any presumption. For if the Holy Congregation did not reject the patronage of St. Cataldus, but only requested that it be demonstrated, then...

[*Latin ed. p. 301*]

Number 301. Never has any impediment been presented concerning the perpetuity of the cult of Saint Cataldus, nor could any obstacle be raised against that decree, nor could it be declared invalid. Furthermore, the devotion towards Saint Cataldus, which is joined with the aforementioned perpetual cult, provides a better title for the world and offers a new and most serious argument in favor of the patronage of Saint Cataldus. Saint George. The very one who instituted the inquiry concerning the opening of the reliquary, and who argued for the patronage of Saint George, first of all warned: with express permission from the Holy Father, obtained through the Holy Office of the Congregation of Rites, the first doubt to be discussed concerns whether or not to use the faculty of opening the reliquary, contrary to the decree of April 10, 1874. CHAPTER 1. Therefore, the decree is at issue, by which the Holy Congregation of Rites, after a hearing with the Holy Chapter of Saint George and others present with it, granted the faculty "so that, in the city of 'Mothucae' alone, the feast of Saint George may be celebrated under both precepts: that is to say, with the observance of the holy day and with abstinence from servile labor." But such a decree remains in full force and validity, and will remain so until it is proven certain to the contrary, according to the well-known Rule 16 of Title VI, concerning the rules of canon law, which states: "A concession granted by the Prince is to remain in force." This rule claims its place all the more strongly, since we are dealing with rescripts of the Roman Pontiff, who are considered to hold all rights in the treasury of their heart (Boni/ VIII, Lib. i, tit. 2, cap. i, Decret. in VI). Therefore, since there is a presumption of truth in favor of the Chapter of Saint George, the arguments of the opponents are: 1. The decree, which we have already mentioned (page 293, note 1), granting permission for the opening of the reliquary, was obtained from the Holy Father through the secretary of the Sacred Congregation of Rites, as is required by law. Indeed, in this case, the Chapter of Saint George could not have requested the faculty to open the reliquary. The Chapter of Saint

Translated by churchlatin.ai, a product of Boyne Archives

George, in whose favor, although with suspended affections, existed the decree of April 30, 1874, which the canons of Saint Peter called "obreptitium et subreptitium" (obtained by stealth and deceit); but these very ones did not wish to request that faculty after all, and although they accepted the role of the accusers, and demanded that the decree of April 30, 1874 be declared invalid due to stealth or deceit, nevertheless they were content with the suspension of that same decree, hoping to perpetuate it forever, thus achieving the goal they had set for themselves.

[*Latin ed. p. 302*]

302. It is incumbent upon those who are challenged to demonstrate that the decree in question is "null" and "void," alleging that whatever rescript has been issued is based on a false premise, namely, that Saint George, the patron of all of Mothuca, was declared to be so in another manner. For, in law, an opening of the cause is never granted unless he who alleges deceit or fraud has at least convincingly proven one of these. *Rota Decis.*, Recentior., Part III, Decree 440, No. 1, and Decree 276, *cor.* Marco, No. 1 and 2, and in *Romana*, April 21, 1823, *cor.* Piccolomini, § 8, and in *Pisauren* or *Senogallien*, concerning the opening of the cause, June 13, 1818, *cor.* Martínez, § 1, and especially in Decree 449, *cor.* Marini, where it is stated: "Nothing is more established in law than that the opening of the cause against a prince's rescript must not be granted unless it is clearly demonstrated that it was extorted through false narration or cunning concealment of the truth." With these premises established, one can abstain from all contention until the opposing party has clearly proven, or the note of deceit or fraud has been established, concerning the rescript of April 30, 1874. However, for the sake of thoroughness, it must be demonstrated that neither deceit nor fraud existed in the prayers. Beginning with the deceit, which expresses falsity, it is shown that the first part of the petition, which is historical, contains information about the Church and the cult of Saint George, as well as knowledge of his patronage existing from ancient times, which is attested to by the unanimous testimony of the renowned historians, Abbot Rochus Pirrus of Netinus in Sicily, in his work *Sacra disquisitionibus illustrata*, published in Palermo in the year 1634, and Placidus Carafa in his work *Mothucae illustratae Descriptio*, which was published in the following year, 1653. This very information is confirmed by documents dating back to the year 179. Furthermore, mention is made in the prayers of a decree issued by the Congregation of Sacred Rites on July 2, 1661, in which both the clergy were granted the faculty of reciting the office of Saint George under a double rite, with an *octava*. It is certainly not deceit that exists in the second part of the petition, in which

Translated by churchlatin.ai, a product of Boyne Archives

it is stated: "As the number of Christians is daily increasing..."

[*Latin ed. p. 303*]

Number 303: The adversaries of the "Stiani" name claim that "Mothuca" signifies "love and devotion to St. George." However, it has been demonstrated that the Municipality of Mothuca, very recently, in the year 1872, among the weekdays, has also included the "feast of St. George, patron of the city," and that this decree has been pleasing to the Provincial Assembly. It has also been demonstrated that 2,140 citizens of any rank or parish have expressed their gratitude to the Pontiff for the granted feast day. It must, however, be carefully noted that the prayers were not made on behalf of the entire clergy and people, but only of those who signed them with their own names. Furthermore, the Chapter of St. Peter has sought refuge in deception, attempting to conceal the truth, unless, perhaps, it wishes to draw some advantage from what has been omitted; to claim that Mothuca has another principal patron, St. Cataldus, or that St. George is declared the sole patron, would prejudice the rights sought by them. However, it is established that, even if St. Cataldus once had a lesser cult, his feast day has fallen into disuse since 1818, and therefore, there is absolutely no right for the Chapter of St. Peter to demand that mention be made of him; furthermore, any rights that the Chapter of St. Peter may have, whatever they may be, are not harmed by the patronage of St. George, provided that the patron of the city neither adds to nor detracts from the rights of the Chapter of St. George. Finally, it has not been demonstrated that St. Cataldus is the proper patron of the Chapter of St. Peter; on the contrary, it is known that a small chapel of St. Cataldus was subject to the jurisdiction of the Church of St. George. And whatever the situation may be, any such prejudice, if it exists, must be demonstrated with the clearest proofs, especially when, as in this case, the matter is already pending execution, as Cardinal De Luca points out, in *De iuris*, Disp. 8, Nos. 5 and 6. *Rota, Decis. 333, No. 1*. It will not be superfluous to present the theory of the eminent Cardinal De Luca, *loc. cit.* For this purpose, an appeal is usually made and, if appropriate, granted. Firstly, with the reduction of the grace, so that...

[*Latin ed. p. 304*]

Section 304, Part XVIII. Recent Decision, and Decision 273, corrected by Mark, No. 7. Therefore, if the goods which the Pontiff granted to the Seminary belonged to the Augustinians, the rights of the inhabitants of Viturcla could not have been violated, and the damage caused to the Convent was not due to the concession made by the Pontiff to the Seminary. However, since the violation of a rightful claim has not been proven, it is improper to speak of fraud on the part of anyone. It is therefore incumbent upon the accusers to demonstrate that there was fraud, namely, that other ecclesiastical officials from Mothuca were present who could have refused

Translated by churchlatin.ai, a product of Boyne Archives

the patronage of St. George. Indeed, from the very prayers, with only the names of the signatories written down, it was already known that there might be some among the clergy who perhaps opposed it. As Gratian states in *Disputatio*, 5.5, No. 26: "Not everything should be recounted, except that which, by law, constitutes an impediment." The author argues that, analytically excluding fraud and also excluding any deceit from the petition of the Chapter and others who signed it, it is not permissible to claim that it originated from elsewhere. Therefore, it is futile for the accuser to labor concerning the information of the Ordinary, or concerning a narration which precedes the decree of the 1st of [month], since its substance and the right sought are denied, or threatened. Secondly, in order that, with the grace remaining intact and its substance unaltered, the petitioner may be admitted only to object to its nullity resulting from fraud or lack of intention, so that a simple authorization of the judge and the party to object, and respectively to judge, what can be done against the validity or operation of the grace, by law. For the first purpose, this is usually not granted except for a very serious reason, and when there is an exorbitant injury that the grace inflicts upon a third party, especially when the grace is already demanded for execution. Gratian, in the aforementioned passage, argues: "Since not everything could move the Prince to grant a grace, but only those things of which it is found expressly stated, and which, by the disposition of the law, must be expressed, or of which there is a caution in the law: since not everything should be recounted, except that which, by law, constitutes an impediment." The Sacred Roman Rota, in Decision 340, corrected by Mark, No. 5, maintained the same theory, stating: "Furthermore, it certainly could not be recounted to the Supreme Pontiff that this belonged to the Community, but it was sufficient that he knew the right of patronage; because the concealment of things that are of right does not in any way imply a defect of fraud."

[*Latin ed. p. 305*]

Neten. 305, April 30th, in order to remove or prevent any deception. For whatever is outside of prayers, cannot be attributed to prayers: according to the decree in Decr. 140, c. Marco, N. i. It is never permitted to open the discussion against the decision of the Supreme Pontiff, unless prayers are shown to be infected with deception and trickery, namely, when the Prince has been deceived by a false exposition or concealment of the truth, and has been induced to approve and accept those very prayers. Finally, responding to the adverse prayer, he warned: to take one thing for another, those who are against [the decision] maintain, since the opening of the discussion has already taken place, due to the Pontiff's concession, by which the faculty of disputing the decision of April 30, 1874, was granted. For when the Pope grants the faculty to open the discussion, he allows it only with the knowledge of the full Congregation, and therefore, the reverent formula

Translated by churchlatin.ai, a product of Boyne Archives

must be used in formulating doubts about the opening of the discussion, whether the intervention of the opening of the discussion is permissible, because the Pope grants the faculty to the extent that it must enter; but the door through which it enters are deception and trickery, the existence of which is prejudicially brought forward in favor of the truth, and is excluded by the slightest doubt to the contrary, according to Decr. 71, N. 25, part. XII. Recent. And it is sufficient for someone to somehow present a doubtful allegation of deception, which must be fully and conclusively proven by the one alleging it. Having settled the prejudicial question, the orator of the Chapter of St. George also proposed a bipartite treatment of the controversy regarding the principal patronage, but with the parts reversed: first, he spoke of St. George, the only one who deserved the title of Principal Patron in Mothuca; then, of St. Cataldus, who is barely counted among the lesser patrons. Regarding the first point, he presented the same legal foundations that the opponent had adduced concerning the Saints chosen as Patrons before the decree of Urban VIII, as testified by Ferraris in Bibliotheca Canonica, under the word "Patronus Sancti," n. 7, who, referring to the decrees of the Holy Office, expressly states: "Also, the elections of Saints as Patrons made before the promulgation of the decree are excepted, Acta, vol. XI, fase. CXXVI, 20.

[*Latin ed. p. 306*]

Neten. 306, concerning certain decrees of Urban VIII, because such a decree, although it may invalidate elections made or to be made subsequently, does not invalidate elections already celebrated. The definition of a Saint's Patronage is derived from the very same words, and Guyet, drawing from the opposite, presents it from *Heortologia sive de festis propriis locorum et Ecclesiarum*, Book I, Chapter VII, Question 2, and also cites the author of Merati in his work entitled *Thesaurus Sacrorum Rituum*, etc., Volume 2, Part I, Section 3, Chapter 12, page 183 (Roman edition, year 1788).

Regarding the criteria by which a Saint is to be considered the Principal Patron among others, the author, citing Guyet again, enumerates them in *op. cit.*, Book I, Chapter VII, Question 8. The same applies to towns: unless, perhaps, there is celebrated in them the memory of some Saint, either Martyr or Confessor, who is venerated and observed by all the inhabitants as the town's patron. In such a case, such towns should be considered to have a proper patron other than the diocesan, especially.

We deem worthy of note what is presented to our readers in the aforementioned passage by the author Merati. - *Observations and additions regarding the patron of a place and the title of a New Church, to Gavanti's Commentary.* - Gavanti, N. 1. I answer: The patron is he whom the Bishop, etc., chooses.

Since in the general rubrics mention is often made of the patron of a place, two points arise for examination: what is meant by the term "patron

Translated by churchlatin.ai, a product of Boyne Archives

of the place," and what is the difference between the patron of the place and the titular patron of the Church? Regarding the first, Gavanti responds that the patron of the place is he whom the Bishop, together with the people, chooses as the patron for reasons which Gavanti himself suggests. However, Guyet, in Book I, Chapter 8, Question 1, states that the patron of the place is that Saint who, either through long-standing custom and tradition, or through a legitimate election, is regarded as a special intercessor before God and is venerated and observed by the entire clergy and people of that place; this definition differs in no way from that given by our Gavanti, except that Gavanti asserts that the choice of one of the Saints as a protector is sufficient; Guyet, however, adds tradition and an unforgettable custom, because in ancient times the patrons of places were more often venerated as such through custom and tradition than through election; whether that custom was first induced by some election, or by some other reason, such as the will of one or the other, or the tacit consent of many, or by some secret inspiration of God. Now, it is certain that the patrons of provinces and kingdoms are to be chosen according to the tenor and with the conditions observed in the decree issued on March 20, 1630.

[*Latin ed. p. 307*]

Number 307: When the titular churches of those Saints, whether they are collegiate churches or abbeys exempt from the ordinary jurisdiction, possess a quasi-episcopal jurisdiction over "other churches in the same locality, as often happens. Nor is it silent about what is appropriately reported by Henricus Pisart in his appendix to the canonical directory, and what Meratius reports, op. cit., page [illegible]. - The second [characteristic] is that the principal patron is designated not only for the cathedral church or diocese, but also for the mother church of no diocese, of the homeland and locality or town, which often does not extend as widely as the diocese. From these [facts], it is already clear what should be thought about St. George. Indeed, from March 19, 1179, the Pope, Alexander III, sent Apostolic Letters to Abbot Humbert of Mileto, concerning the monastery of the Most Holy Trinity and the Blessed Michael the Archangel, in which he would list "in Sicily, the church of St. George of Mohac" among "the churches under the protection of St. Peter and our protection." But it is also clear from Apostolic Letters issued by His Holiness Innocent XI on this date, June 4, 1689, that the church of St. George is the only one that exercised a mother church status in Mothuca, and exercised a quasi-episcopal jurisdiction over other churches in the same locality, from the fact that the Pope, confirming and ratifying what the Congregation of Holy Rites had decreed against the Chapter of St. Peter, which vehemently contested the equality of the mother church status, on May 24 and September 6; decreed that all the privileges of the mother church belonged to the collegiate church of St. George, and that the letters were strengthened with the clause "and it shall be null and

Translated by churchlatin.ai, a product of Boyne Archives

void if anyone should attempt to alter these things in any way." Therefore, if, according to what is transmitted by Guyetus, Meratius, and Pisart, the principal patron is designated by the patron of the mother church, then it is no longer to be doubted that St. George, whose church was the mother of the entire city, was the principal patron of Mothuca. The second characteristic that the authors mention of the principal patron is that the Saint is venerated by all the inhabitants as the patron of the locality.

[*Latin ed. p. 308*]

The patron saint is to be venerated and observed, and in this matter, the fullest and most varied testimonies have been presented. And in this place, all proofs should precede the testimony of historians concerning the illustrious Abbot Roch of Pirri and Placidus Carafa in Sicily. First, that is, Roch of Pirri, in the Sacred Investigations of Sicily (a work which was published in Palermo in the year 1634), Volume 2, page 233, states: "Motica, an ancient and extensive town, with the title of county from the year 1300, and with a population today of 14,443 and 3,586 houses, is situated in a deep valley; the head of the entire county is the ancient family of Caprera, to which the jurisdiction, in the year 1392, after the Claramontane Counts were expelled by King Martin, and now belongs to Alphonsus Enriquez and Caprera. The parish church was dedicated by the Claramontane Counts to their patron saint, Saint George; but in the year 1630, on November 6th, from the decree of Pope Urban VIII, which was written in the year 1634 on July 6th, a canonical college was established... Here, the relics of several saints are venerated; especially those of Saint George the Martyr, from his leg and tooth, as patron and protector; whose feast day, April 23rd, is a solemn one among the people of Motica, and the relics are carried in a silver shrine with pomp and procession." Furthermore, more can be found in the work of Placidus Carafa, entitled "Illustrated Description of Motica," published by the press in Palermo in the year 1653, and highly praised by all the people of Motica. From him, it is stated that the cult of Saint George began in the year 1086, when "Roger, son of the Norman Count Tancred, having expelled the Saracens from the kingdom, held Calabria and Sicily, and with the consent of Pope Urban II, was named Count in the year 1092, after Sicily had been subjected by the barbarians, and to him we find that glory was attributed through divine action. For in the army of Roger, a most splendid knight was seen, bearing the banner of the Cross for the Normans, and Saint George was believed to be present (Manrolye, page 96; Bonfils, in his "Sicily," Book 4, Part 1, page 179; and other Sicilian historians)."

[*Latin ed. p. 309*]

Note. 309. The same author also writes on page 65: "That pious [count] Rogerius built a temple for the Virgin Mary at his own expense, where it is happily seen that it is increasing in benefits and honors." And concerning

Translated by churchlatin.ai, a product of Boyne Archives

this temple, which is called the "Mother Church," and is the principal one in the city, and is distinguished by a noble college and a prebend, it enjoys great veneration, and the Counts of Motucens prosper greatly. And on page 66, the following is added: "To this church, gifts have been given by the same pious count, the ownership of which still endures. And the illustrious counts annually contribute a tenth and the entire revenue of the state to it. And in the city of Motuca, as in the capital of the region, they have chosen Saint George as their principal patron." To these things, add what is written on page 106 and following: "But let us turn our attention to the magnificent and principal temple of Motuca, which is called the "Greater Church of the Most Holy Virgin," dedicated to Saint George, its protector and most powerful patron... In this very temple, which is the principal one in the city, many relics of the saints are kept, especially those of the same martyr, including a tooth and a shoulder bone, as we remember elsewhere. The feast day of this martyr, April 23rd, is solemnly celebrated by the people of Motuca, and with extraordinary devotion and magnificent ceremony, the relics are carried around in a chest made of the finest silver, which was originally made by Lord John Enriquez and the Governor of the State, with religious persons, the clergy, and the devout people following... For the great feast day of the city's greatest protector, a very large crowd, even from outside the city, gathers." The same author also used similar words in the "Description of Sicily," published in the same year, 1653, with the same printing, writing: "The Holy Church of Motuca, the Greater Church of the Holy Cross, among the countless relics of the saints, possesses a portion that is most excellent, and the insignia of the great and principal city and state, the patron saint, the soldier George, are displayed: a shoulder bone, a molar, and a banner, and almost..."

[*Latin ed. p. 310*]

310. Neten possesses the relics of numerous other Saints, which are carried in great solemnity and with the attendance of the greatest number of people on April 2nd and 3rd, throughout the entire city. Innumerable documents corroborate the words of the historians, and in particular: I. The document concerning the laying of the first stone for the reconstruction of the church of Saint George, which was carried out with great solemnity on March 25th, 1463. II. The instrument celebrated in the year 1657 between the Chapter of Saint George and the Chapter of Saint Mary of Bethlehem concerning the ringing of the bells on Holy Saturday. III. The document concerning the possession of Francis Carafa, Abbot of the Benedictine order, and Prelate of the church of Saint George, which took place in the year 1668. IV. The acts of the consecration of the rebuilt church of Saint George, completed by the Bishop of Syracuse, Matthew Trigona, on February 1st, 1738. In all of these documents, Saint George is called the patron of the city, or is referred to by the very opponents of the Chapter

Translated by churchlatin.ai, a product of Boyne Archives

of Saint George, among whom, even then, and as is the case now, were prominent the Canons of Saint Mary of Bethlehem, a daughter church of Saint Peter's. Testimonies of the most solemn festivities of Saint George and of the processions have been left by the Motucani clergy, twenty priests in the year 1686, and by other priests, six in number, on August 21st, 1703, together with citizens worthy of all praise. Detailed descriptions of the processions held in the years 1758, 1759, and 1760 exist in the archives. It is truly remarkable that, even though in the year 1798 the treasury had ordered that all ecclesiastical furnishings be converted into numbered money, at the insistence of the faithful Canons of Saint George, it was decreed that the silver ark in which the relics of Saint George were kept be preserved, solely because Saint George was the principal patron of the city of Motuca. But even if these things were lacking, the Sacred Congregation of Rites concluded the matter on July 2nd, 1661. The Sacred Congregation, to which all the disputes concerning the matter of maternity were thoroughly known.

[*Latin ed. p. 311*]

Number 311, concerning matters pertaining to the Chapter of Saint George, having granted its request, responded: "The Congregation of Holy Rites, having considered the petitions of the Chapter, benignly grants to the Collegiate and Parish Church of Saint George in the city of Mothuca, in the Diocese of Syracuse, the faculty to grant, to both the secular and regular clergy, the privilege of reciting the proper prayers and readings of Saint George, the Patron and Titular Saint of that Church, under a double rite with the octave." To this decree, objections are sometimes raised, arguing that Saint George is the Titular and Patron of the Church, not of the city; but this is in vain. For the words "Patron and Titular of the same Church" must be referred to that Church which is mentioned in the same decree as the "Distinguished Collegiate and Parish Church." Furthermore, since the Patron of a Parish Church is the Patron of the place, it is not to be doubted that the concession applies in reason of the principal patronage. However, the object of this concession, namely, the faculty of reciting the proper office of Saint George under a double rite with the octave, for both the secular and regular clergy; it is well known that such privileges, if extended to both clergy, are usually granted only to the Patron of the Diocese or of the place. It is necessary to note what Meratius states in his work, page 186: "Gavant proceeds to assign the distinction that exists between the patron of the place and the patron or titular of the Church, and he asserts that the former extends more widely than the latter, since the former pertains only to one Church, while the latter concerns many Churches. The place, says Gavant, number j, is taken to mean the multitude of clergy and people, or rather, many clergy and people in one place, such as a city or a Diocese." And on page 189, "Gavant, number 5, states that the regular clergy are bound to observe the feast of the patron of

Translated by churchlatin.ai, a product of Boyne Archives

the place and to celebrate the solemn office, but not to observe the octave of the same." What Gavant teaches here, from the decrees of the Holy Roman Church, is that the regular clergy are bound to observe the feast and to recite the office under the rite of the first class of the patron of the place, but they are not bound to observe the octave of the same; indeed, it is also evident and confirmed by other decrees of the Holy Roman Church, which are given in our index.

[*Latin ed. p. 312*]

It is not dissimilar to what Lucius Ferraris wrote under the word "Patrons" (Patroni), number 5: "Regular clergy are bound to celebrate the feast and office of the Principal Patron of the place, and of the Patron or Protector of the Principal City, Kingdom, or Province, with a double rite of the first class, and without an octave. However, they are not bound to celebrate the offices of less principal patrons, or of Saints of the Diocese, unless they are described in the Calendar." The same author refers to Decrees of the Holy Roman Church, among which is number 283, with the following: "The office of the Protector of the Principal City must be celebrated with an octave by the City and the Diocese, with a double rite of the first class, both among the secular clergy and among the Regular clergy of both sexes, but the latter without the octave" (Holy Roman Church, May 23, 1630, in Caven). Therefore, either it must be said that the Holy Congregation did not sufficiently consider what should be granted for Saint George, or it must be held that Saint George was truly the only Principal Patron of Mothuca at that time. Indeed, the first of these possibilities is both absolutely and relatively absurd, given the particular circumstances. Meratius, after completing the aforementioned questions, states the words of Henry Pisart, page 191, of the work cited above: "Before we conclude these our observations and additions concerning the rite and manner of celebrating the feasts of Patrons and titular saints, it seems appropriate to gather some things from what Henry Pisart states in his appendix to the Canon Directory. First, if in any city or town, besides the Principal Patron of the place, there are others considered less principal, it appears more likely that the secular clergy could and should observe their feasts; but not the Regular clergy, unless the feast is by decree in the people, in which case we believe, with Gavanto, that the Regular clergy could also conform; observing the office of such a feast, either its proper office, if it has been duly approved, or the common office. Second, by the Principal Patron of the place, not only is the Principal Patron of the Cathedral Church or Diocese designated, but also the Patron of the Mother Church of any Diocese, of the country and place or town, which often does not extend as widely as the Diocese. Third, the Patron of the Parish, or the titular saint of the Parish Church, must be venerated by all clergy who are assigned to that church, and this with a rite of the first class and with the octave. However, Regular clergy residing in

Translated by churchlatin.ai, a product of Boyne Archives

such a parish in the city do not observe this feast, since they have their own titular feast in their own church, and furthermore, they celebrate the feast of the departing city." This is confirmed by a rescript, etc.

[*Latin ed. p. 313*]

Over a period of 313 years, the concession was in effect. At that time, the decrees of Urban VIII were still fresh in memory. From all of this, two things are clearly evident: I. Saint George is the only patron of the city of Mothuca, as Meratius op. cit. states: "Although the patrons of a place can be more than one, only one regularly holds the position of principal, so that all the others are considered less important, and their feast day is not celebrated unless with a double greater rite." II. His feast day is to be observed by precept, as Ferraris loc. cit. n. 6 states: "However, the feast day of one of the principal patrons in any kingdom or province, and of another equally principal in any city, town, or village, where these patrons are held and venerated, is to be observed by precept, as Urban VIII expressly states in the Constitution which begins: Universam. § 2." It is certain, from the most ancient times, that the feast day of Saint George has been constantly observed by precept, as evidenced by the writings of Rochi Pirri, "whose solemn feast day is celebrated among the people of Mothuca," and by Placidus Carafa, who testifies on page 65, "that the people of Mothuca are accustomed to celebrate the feast days of martyrs more than those of other saints," and on page 107, "that his feast day is 'the most solemn' among the people of Mothuca." It is also evidenced by the act of possession of the Preposition of Saint George, and by the use of pontifical vestments, in which it is written: "Because today the solemn feast day of the great martyr George, the titular of this Matricis and the patron of this city, is celebrated in this aforementioned city, etc." The feast day of Saint George, on April 23rd, has been constantly observed by precept, as testified by the marriage announcements carried out on that day each year from the year 1624 to the present, and also by the Calendar of the Religious Family of Saint Dominic, published in the past century. Among the decrees of the Sacred Congregation of Rites, as reported by Ferraris, is the following, under N. 288: "The feast day of the principal patron in any city, town, or village where these patrons are held and venerated, is obligatory, with the obligation of hearing the sacred [offices] and abstaining from servile works" (Sac. Rit. Cong. 13 September 1642).

[*Latin ed. p. 314*]

314. Moreover, on the day under the date of April 23rd, it is written: "St. George, Martyr." "Caccab. Motuc et Ragus. Pa. Pr. de praec." >. With all of this, the continuation of the cult [of St. George] is to be maintained. Given that these things are so, St. George's Chapter requested that the principal feast day of its titular saint and protector of the city be declared a holy day of

Translated by churchlatin.ai, a product of Boyne Archives

obligation, so that it might proceed safely after the decree of the year 1818, issued by the Most Holy Pope Pius VII, by which the feasts of the patrons of both Sicilies, both within and beyond the harbors, were ordered to be transferred to the nearest Sunday. For although the feast of St. George in Motuca was still celebrated annually on April 23rd, and was a holy day of obligation, as testified by the Bishop of Netinus, some had doubted the sacred obligation to observe it and to abstain from servile labor. Furthermore, in order to confirm the principal patronage, in addition to the calendars of the Dominican Fathers, there are also the calendars of the Religious Orders of Minor Observance, and of the Reformed and Discalced Carmelites of the Province of Panormi for all of Sicily, in which the formula is used: "on April 23rd... for the Convent of Motuca and Ragus, St. George, Major Duplex Classis, Pastor, Prince, and U." Finally, the most important document of all for our times is the resolution of the Municipality of Motuca, issued in the year 1872, in accordance with the Italian law of October 17, 1869, which lists the sacred days to be celebrated by the civil government, among the feasts of the Catholic Church. It is stated that the schools must also be closed on April 23rd, because of the celebration of the feast of St. George, the patron of the city. It should not be overlooked that this resolution was approved by the Provincial Council. And it is a particular circumstance that, when the decree of April 30th was received with great joy by the people of Motuca, among whom were nearly one hundred and forty from every group, order, sex, and district, they wished to give thanks to the Pope, and to send a letter of congratulations to Rome. As for the execution of the decree, which was being debated, it was proven to be sound, as is evident in the Directory for divine services.

[*Latin ed. p. 315*]

Noto. In die 315 anno Domini 1875, ad Dioecesim Netinam scriptum est: «Aprilis 23. F. 6. S. Georgii M. ... pro civitate Mothucae tantum est « festum sub utroque praecepto, adstandi scilicet sacro et a «servilibus abstinendi, Dec. 30 aprilis 1874 ». Sic, S. Georgii, cum principaliori patronatu in tuto posito, S. Cataldi patronatum aggrediebatur orator: eiusque existentiam inficiabatur, ad trutinam revocando responsum a Sac. Rit. Congr. datum precibus Didaci Carrera die 19 iunii anni 1700. Ad rem recolebat: Didacum Carrera se dicentem Cappellanum Maiorem Ecclesiae S. Cataldi, penes Congregationem Sacrorum Rituum postulasse, ut concederetur Mothucae civitati ac distructui facultas recitandi officium proprium S. Cataldi, quem ipse Patroni Principalis titulo decoraverat; petitionemque communivisse electione Municipium de anno 1629, decreto Episcopi Capiblanco, qui anno 1655 quatuor inter patronos S. Cataldi principalorem fecerat, aliisque omnibus documentis quae in praesenti e pulvere excitaverunt adversarii: et nihilominus S. Congregationem respondisse, Ponente Emo Patre Cardinali De Colloredo « doceant nos de legitima « electione in patronum, et de

Translated by churchlatin.ai, a product of Boyne Archives

facultate recitandi officium de « communi ». Quo quidem responso aperte dictum fuisse, documentis ad eam editis, nec electionem in patronum in probatis esse, nec facultatem recitandi officium de communi. Itaque cum nullum prorsus novum documentum ex adverso exhiberetur quod decretum diei 14 iunii 1700 infirmandum esse suaderet, existentem S. Congregationis resolutionem in omnibus esse servandam.

Verumtamen, hoc etiam reposito invictissimo argumento, alia haud minoris ponderis suppeditare Mothucanarum rerum históricos, et documenta ad acta exhibita. Etenim, Rochum 1 Videri poterit haud simul coaherere quae dicuntur in provisionali decreto diei 19 iunii 1877, et quae Capituli S. Georgii orator documentis innixus asserebat. Sed tenendum est, S. Congregationem ignorasse, cum provisionale decretum edidit, Ordinarium Netinum in Kalendario an. 1875, Decreti diei 30 aprilis exequutionem curavisse.

[*Latin ed. p. 316*]

316. It is noteworthy that those who write about the patronage of Saint George do not mention Saint Cataldus, although they claim to favor the Chapter of Saint Peter (which, from that time onward, was contending for the patronage of Saint Cataldus). And Placidus Carafa described the church dedicated to Saint Cataldus, which was located in the fortress of Mothuca and was subject to the parish of Saint George, as follows: "There is in this fortress the most magnificent palace of the government, and many houses inhabited by people, and for the convenience of these, there are three temples dedicated to celestial deities, of which the first is a filial and suffragan church under the name of the Divine Mary, which contains twelve priests who are continuously devoted to serving it, and whose annual revenues are most generously assigned by the Count himself for the performance of sacred duties. The second is a small chapel dedicated to Saint Cataldus, founded by the Counts within the palace. Etc." And the most learned writer on matters of history and geography did not speak of his feast day, and much less of his patronage. However, all historical testimonies are surpassed by the visitation carried out in the year 1633 on March 5th by the Bishop Antenoro, who reported that the church of Saint Cataldus was rather a private oratory than a church, and he ordered that no Mass be celebrated in it, and he commanded that his relics not be publicly displayed, nor be admitted to the public veneration of the faithful, under pain of excommunication. From these facts, it is absurd to conceive that the citizens of Mothuca venerated Saint Cataldus as their principal patron, who never had a church in Mothuca, nor authentic relics; whose chapel, destroyed by an earthquake, was never restored; whose alleged relics were scattered and lost; before Saint George, for whose honor a magnificent temple was founded, bearing the distinguished title of the mother church, recently restored at the expense of the citizens themselves,

Translated by churchlatin.ai, a product of Boyne Archives

and whose relics were held in great honor. Furthermore, it is also evident to those who consider the matter that the alleged approval of the relics of Saint Cataldus, granted by the Holy Roman Church in the year 1629, which was published by the Canons of Saint Peter, should be carefully examined: because if it existed,

[*Latin ed. p. 317*]

Number 317. The Bishop of Antenóro, in the year 1633, did not forbid the relics from being exposed for public veneration, and certainly mention of this asserted decree would have been included (which is entirely absent) among the documents presented by Didaco Carrera, along with the prayers. Furthermore, a comparison was made between the prayers of the Chapter of St. George and those of Didaco Carrera, which had the same object, namely, the faculty of reciting the proper office of St. George or St. Cataldus; and after examining the responses of the Holy Congregation of the dates July 2, 1661, and June 19, 1700, the question is considered settled, since the Holy Congregation most firmly denied what was granted for St. George, when it was denied for St. Cataldus. Although, even if it is granted that St. Cataldus had some cult in Mothuca, this cult has fallen into disuse. And indeed, even the adversaries themselves confess that, up to the Sunday nearest the following May 10th, the feast of St. Cataldus was celebrated, while the feast of St. George was constantly observed on April 23rd, until the present time. Examining the parochial books from the year 1825 to the entire year 1860, the number of those baptized with the name St. George reached one thousand nine hundred and sixty-six: and during the same period, the name St. Cataldus was used for only thirteen births. It is attested by the sworn testimony of witnesses that no chapel or sacred place dedicated to St. Cataldus can be found in Mothuca or its territory; while fourteen images of St. George are to be found, some of which are located in the district of St. Peter. On the other hand, the feast of St. Cataldus is shown to be celebrated during the fairs that still take place in the summer, from the ninth to the eleventh of May, as Placidus Carafa mentions. However, the historical accounts do not limit the fairs solely to the feast of St. Cataldus, but rather narrate (Op. cit., page / 57) that several fairs are held throughout the year, namely, "On May 10th, in the feast of St. Cataldus; on the third Sunday of the same month, in the feast of St. Mary of Grace; on June 24th, in the feast of St. John the Baptist; on August 6th, in the feast of the Most Holy Savior; on September 29th, in the feast of St. Michael." Therefore, even if it were conceded that the fairs demonstrate a patronage, it certainly does not invalidate the principal patronage in this case.

[*Latin ed. p. 318*]

318. Nevertheless, even if two patrons are of equal standing, Saint George ought nevertheless to prevail; for the Most Holy Congregation

Translated by churchlatin.ai, a product of Boyne Archives

of Rites decreed on March 12 that: "In the precedence of patrons or protectors, the order of the hierarchy must be observed, and within that order, precedence in election is determined." Furthermore, Guyetus, in *Heortologia*, Book IV, Chapter VI, Question 6, has written that: "When patrons are concurrent with one another, the one who is more distinguished in person, such as an Angel before an Apostle, an Apostle before a Martyr, a Martyr before others, and others according to the order of the litanies, should be preferred." Indeed, Saint George surpasses Saint Cataldus in both respects: first, because he is older than Saint Cataldus; and second, because, as a Martyr, he ought to precede a Confessor and a Bishop. Finally, having set aside all disputes of law and fact, it is better to restore unity among those who are divided, than to perpetuate strife by approving of duality.

4. After these and other considerations have been carefully weighed, the following questions must be resolved.

I. Does the publication of opinions contradict the decree of April 30, 1874? And, to the extent that it does, is it affirmative?

II. Is Saint George, the Martyr, or Saint Cataldus, the Bishop, the principal patron of the city of Mothucae, and therefore, is the aforementioned decree of April 30, 1874, to be observed or not in this case?

5. On this matter, Guyetus, in *Op. cit.*, Book I, Chapter VII, Question 5, writes: "It often happens that several patrons are considered equal in a diocese, such as Saint Ursinus and Saint Sulpitius in Biturigibus, Saint Euricius and Saint Ancianus in Aurelius, etc. From this, one can immediately infer that neither is the principal, but that both are to be considered among the less principal." I do not deny this consequence if it is referred to the rite of the office, namely, that both are of the same quality, whether of double major or minor rank, but not of the first class; however, if the reason of persons is taken into account, one is usually preferred to the other, at least for the time being, and indeed, by merit, if the first was the first to embrace the Christian faith, etc. This author explains the order of the hierarchy more fully under the title "De..."

[*Latin ed. p. 319*]

Noto. On the 31st of March and 1st of April, the Most Reverend Fathers, Prefects for the Preservation of Holy Rites, after full deliberation on the 13th of April, 1878, decided to respond. Regarding the matter, provision will be made in the second response. Regarding the second matter: Affirmative to the first part, negative to the second part; therefore, the aforementioned decree (of the 30th of April, 1874) is to be executed, and furthermore, the manner of inscription for feasts proper to the dignity or condition of a person. Thus, the degrees or orders are to be distinguished from each other in precisely the manner in which Angels and Archangels, Patriarchs and Prophets, Apostles and Evangelists, Disciples of the Lord,

Translated by churchlatin.ai, a product of Boyne Archives

Martyrs, Bishops, non-Bishops, Confessors, Bishops, non-Bishops, Virgin Martyrs, non-Martyrs, Non-Virgins, Martyrs, Widows, follow each other in the Litanies. Furthermore, a decree of the Sacred Congregation for the Resolution of Causes was completed concerning the resolution of the controversy between the Chapter of the Church of Saint George the Martyr and the Chapter of Saint Peter in the city of Mothuca, in the Diocese of Noto, regarding the principal patron of the aforementioned city, namely, whether the principal honor should be given to Saint Cataldus, Bishop, or rather, to Saint George the Martyr, as had been established by His Holiness Pope Pius IX through a decree of the Sacred Congregation of the 30th of April, 1874, the execution of which decree remained suspended by another provisionary decree of the same Sacred Congregation of the 19th of June, 1877, whereby, in the meantime, the parties in dispute were granted the right to properly present their claims. The Most Reverend and Most Illustrious Lord Cardinal Miecislaus Ledochowski, Relator in this cause, at the ordinary meetings of the Sacred Congregation for Rites, held at the Vatican, proposed the following questions for discussion:

QUESTION I. Whether it is permissible to raise objections against the decree of the 30th of April, 1874?

QUESTION II. And if so, whether Saint George the Martyr, or Saint Cataldus, Bishop, is the principal patron of the city of Mothuca, and therefore, whether the aforementioned decree is or is not to be executed in this case?

The Most Reverend Fathers, Prefects for the Preservation of Holy Rites, having heard both sides, both orally and in writing, having considered the rights presented from both sides, and having carefully examined them, decided to respond as follows:

Regarding the first matter: PROVISION WILL BE MADE IN THE SECOND RESPONSE.

Regarding the second matter: To the first part, AFFIRMATIVE; to the second part, NEGATIVE; therefore, the aforementioned decree is to be executed, and furthermore.

On the 12th of April, 1878.

Thereafter, the aforementioned Secretary made a faithful report of all these matters to the Most Holy Lord Pope Leo XIII, and His Holiness approved and confirmed the decree of the Sacred Congregation.

On the 2nd of May of the same year.

Fr. T. M. Card. MARTINELLI, Prefect, S. R. C.

Piae. Ralli, Secretary, S. R. C.

[*Latin ed. p. 320*]

From all of these things, one can gather the following: I. A Pontifical rescript possesses a presumption of truth, and therefore, a question con-

Translated by churchlatin.ai, a product of Boyne Archives

cerning a Pontifical rescript can only be raised with the explicit permission of the Pope himself. II. The opening of the mouth [i.e., the possibility of questioning] can only be applied in that case in which it is shown that the rescript was requested either through false reporting or through the withholding of the truth, that is, through deceit or fraud. III. The deceit or fraud must be conclusively demonstrated by the accuser, since it is sufficient to render the proof in some way doubtful in order to exclude such claims. IV. The accuser contending for deceit or fraud must prove a substantial cause and a violation of his own right; and this is especially required if the matter has already been committed to execution. V. It is useless to seek deceit or fraud outside of petitions, because the intention of deceiving must be shown in the one who obtained the rescript, and the rescript contains, either expressly or tacitly, a clause that if the petitions are based on truth, they are valid. VI. Silence concerning matters of law does not help in proving fraud, since only those things that are legally obstructive must be mentioned. VII. According to the Decree of Urban VIII of March 23, 1630, the election of a patron for a city must be made by secret votes of the people, through the general council of that city or place, and not by officials alone; and the election must have the consent of the Bishop and clergy of that place. VIII. This provision applies to elections to be held in the future, and not to those already existing; and the due respect owed to Pontifical rescripts is derived, either from the very formula of questioning. For although the Pope may refuse to open the door [to questioning], the door of the judges is not opened, and the doubt is usually raised as to whether the judgment granted by him can enter or not. The door through which such a judgment can enter is the defect of deceit or fraud; and if this is absent, the door remains closed. This rule has greater force when it is a question of Apostolic Letters issued by the Pope *motu proprio*.

[*Latin ed. p. 321*]

321. The ancient Patrons, venerated before this decree, are to be maintained.

I. A Patron is to be venerated, who, whether through perpetual usage and tradition received from ancestors, or through a legitimate election, is considered by the entire clergy and people of that place as a special intercessor before God and a particular advocate.

X. The Patron of a place and the titular Patron of a church differ greatly. For the latter pertains to only one church, while the former encompasses many churches.

XI. The term "place" is to be understood as referring to a multitude of clergy or people, or rather, to many clergy and people.

XII. Nevertheless, the titular Patron of a church can also be the Patron of a place, if the church excels in its founding and possesses a quasi-episcopal jurisdiction over all other churches in that same place.

Translated by churchlatin.ai, a product of Boyne Archives

XIII. The name of the titular Patron of the mother church is frequently given to the citizens, with images of the saint displayed in niches along the roads, as well as within the church itself, showcasing the church's size and ornamentation, the preservation of relics, the continuation of worship, the granting of a holiday to the schools on that day, and the celebration of the feast day, thereby indicating the principal Patron.

XIV. In such matters, the faculty of reciting the proper office with the octave, for both secular and regular clergy, which is usually granted only to the Patron of the place or city, is to be held in high regard, although regular clergy are not bound to observe the octave.

XV. There must be only one principal Patron in a given place or city, although other Patrons may be present in the same place or city, but of lesser importance.

XVI. Among several Patrons, the principal Patron is he who excels in antiquity and hierarchical order.

XVII. The feast day of the principal Patron is to be observed as a holy day of obligation, with the accompanying duties of attending Mass and abstaining from servile work.

XVIII. In the case of Most Reverend Fathers who see a resolution to a doubt regarding the opening of mouths depend on the question of the principal Patronage of Saint George or Saint Cataldus, the same doubt is recorded in the Acts, volume XI, page CXXVII, 21.

[*Latin ed. p. 322*]

Number 322: It was deemed fitting to respond according to the formula provided in the second section, which is consistent with established legal practice. XIX. The execution of the Pontifical rescript has been the subject of much controversy, and therefore the resolution of the second doubt contains not only the affirmation of the Principal Patronage of Saint George, but also the command to execute the decree of April 30, 1874. DECREE. Regarding the use of petroleum. FAVENTINA. Since there is not a unanimous opinion regarding the interpretation of the Decree issued by the Sacred Congregation of Rites on July 9, 1864, concerning the use of petroleum and oils derived from plants for lighting the lamps of churches, so that some have believed that petroleum can be used in churches at their own discretion and outside of cases of necessity, provided that it is not used before the Holy Eucharist or before sacred images, the Reverend Monsignor Anthony Conti, Capitular Vicar of the Diocese of Faventina, petitioned the Sacred Congregation of Rites to declare whether it is contrary to the meaning of the aforementioned Decree of July 9, 1864, to use petroleum to light the church when there is no necessity, and without the prior consent of the Ordinary. The Sacred Congregation, after mature deliberation, and with the reference of the undersigned Secretary, deemed it fitting to respond:

Translated by churchlatin.ai, a product of Boyne Archives

"Petroleum or any other oil derived from plants cannot be used to light the church; but only in cases of necessity, at the discretion of the Ordinaries." And thus it responded and ordered it to be observed, on March 20, 1869. "You will find this decree on page 38, volume I of these ephemerides."

[*Latin ed. p. 323*]

Apostolic Letters 323. LETTERS from Our Most Holy Lord Leo XIII, Pope, to the Most Reverend Paul Melchers, Archbishop of Cologne.

LEO PP. XIII. TO THE VENERABLE BROTHER, GREETING AND APOSTOLIC BENEDICTION.

Your dutiful letters, in which you expressed your wishes on the solemn feast of the Nativity of the Lord, have brought us solace and joy; through them, your excellent devotion to Us and your unwavering loyalty to this Apostolic See have been clearly demonstrated. And while these acts of devotion endear you more to Us, they also merit honor and praise, and, together with the full obedience that the flock of the Church of Cologne, entrusted to you, shows towards Us, they confirm its strength. We believe that this has come about not without the will and intention of the Divine Governor and Ruler of all things, so that the signs of piety and devotion that you have expressed should be presented to Us by other Venerable Brothers, Catholic Bishops of the world; for in this great turmoil of affairs, this remarkable agreement greatly comforts and rejoices Us; and it expresses the words of the Apostle from Our heart: "Blessed be God, who comforteth us in all our tribulations" (2 Corinthians, 1). And indeed, as soon as We have been elevated to this summit of the Apostolic See, We have addressed Our words to all Venerable Brothers in the Episcopate, and We have found such a concentration of thoughts, opinions, and almost of words in their responses; so that We are not only delighted by the wonderful unity that prevails in the Church of God, but We have also clearly seen that all the Bishops of the world are faithful interpreters of the sound doctrine that is transmitted by the Apostolic See, and that they will readily join Us in Our pastoral solicitude and in Our labors.

Truly, this unity in doctrines, in councils, and in works gives Us hope that all things will proceed according to Our wishes; and when this happens, not only will the Church enjoy the greatest benefit, but civil society will also receive abundant fruits of salvation.

Indeed, Venerable Brother, you know well this sentiment that is held by Us (which We have often expressed in words and have openly testified): that the grievous divisions that afflict human society are primarily to be remedied by restoring the authority of the Church, so that it may publicly exercise its salutary power for the good of society, and so that its freedom may not be so hindered that it can scarcely attend to the needs and the good

Translated by churchlatin.ai, a product of Boyne Archives

of individuals in private.

[*Latin ed. p. 324*]

324 Apostolic Letters: Indeed, Our conviction is not solely derived from the fact that We possess a profound knowledge of the nature and efficacious power of the Church, but also from undeniable historical evidence, by which it is most clearly demonstrated that the best of republics flourish when the Church enjoys full freedom of action; whereas, whenever it is constrained by chains, those principles and doctrines grow stronger, by which all human society is undermined and dissolved. Since this has long been clear to Us, it was natural that, from the very beginnings of Our Pontificate, We should strive to encourage princes and peoples to cultivate peace and friendship with the Church. And to you, Venerable Brother, it is known that We have earnestly intended that the noble German nation, composed of divisions, should attain lasting peace and its benefits, while preserving the rights of the Church; and We believe that it is also known to you that, as far as We are concerned, nothing has been left undone in order to achieve such a glorious and worthy goal. But whether what We have undertaken and are striving to accomplish will ultimately have a successful outcome, He alone knows from whom all good things come, and who has instilled in Us such an ardent zeal and desire for peace. But whatever the outcome may be, conforming to the will of God, We shall nevertheless persevere with the same zeal in performing the arduous task entrusted to Us, as long as life remains. For it would be wrong to abandon or neglect such a matter, since, due to false doctrines and the audacious schemes of wicked men, who despise all restraint of the law, a grave danger threatens the religious, political, and social order to such an extent that We would consider it Our duty to neglect the office of the Apostolic Ministry, unless We provide the most effective remedies of the Church to human society, which is now brought to the brink of ruin. Therefore, no obstacles whatsoever interposed will deter Us from this purpose of promoting the common good, and therefore also of your nation, Venerable Brother. For Our hearts can never rest until We see the Pastors of the Church condemned or exiled, the priestly ministry subjected to every kind of constraint, religious sodalities and pious congregations dissolved, and the education of youth, even of those destined for the priesthood, deprived of Episcopal authority and oversight. But that this work of salvation undertaken by Us may be accomplished more fully and quickly, We call upon you, Venerable Brother, and other illustrious Bishops of these regions, to join Us in efforts and endeavors to accomplish this work, striving that the faithful, entrusted to your care, may become more and more obedient to the teachings of the Church, may more diligently observe the prescriptions of divine law, so that the communication of their faith may become more evident in the recognition of every good work that is in them in Christ Jesus (cf. Philippians 1:6). Thus, it will come to pass

Translated by churchlatin.ai, a product of Boyne Archives

that through their modesty and obedience to the laws rendered (which, however, are a sign of the faith and duty of a Catholic man).

[*Latin ed. p. 325*]

The Apostolic Letters (number 325) demonstrate that those who receive the benefits of peace are worthy, and that they long enjoy the fruits of that peace. Furthermore, Most Reverend Brother, you understand perfectly well that Our efforts in this very important matter will be entirely in vain, unless God, our guide and helper, is with us; for unless the Lord builds the house, they labor in vain who build it (Psalm CXXVI). Therefore, it is necessary that we offer fervent prayers and supplications before Him, and that we earnestly beseech Him to illuminate with heavenly light Our Vicar in earth and the Bishops; and since the hearts of kings are in His hand, may He incline the renowned and powerful Emperor of Germany, and those outstanding men who are associated with him, to more moderate counsels. Finally, since the prayer of many who agree together somehow strengthens the divine goodness, we hope that the Bishops of Germany will, with united effort, stir up the flocks entrusted to them, so that, united in prayer, they may implore the divine assistance and favor that are so necessary for Us. As a pledge of heavenly blessings and a token of Our affection, We impart to you, Most Reverend Brother, and also to the other Bishops and faithful of Germany, Our Apostolic Benediction, which We bestow from the depths of Our heart in the Lord, with all diligence. Given at Rome, near St. Peter's, on the 24th of December, 1878, in the first year of Our Pontificate. LEO XIII, POPE. FROM THE HOLY CONGREGATION CONCERNED WITH THE LIQUIDATION OF ECCLESIASTICAL PROPERTY. March 23, 1878. Summary of the matter. This cause had been presented several times before the Holy Congregation, and it seemed that all avenues were closed to new questions, by the responses given in the plenary sessions of December 12, 1874, and September 2, 1876, so that any recourse to a new investigation would be impossible, according to the third article concerning liquidation.

[*Latin ed. p. 326*]

Regarding the tithes, 326 were received after the settlement. And since this publication has already presented a summary of this matter twice, so that the reader may not lack a complete understanding of the gravity of the issue, we add a further account. By resolution of December 12, 1874, it was established that the parish priest of S. had the right to collect tithes from the lands of the Family N., but since the Family N. strongly contended that they had rendered previously unproductive lands fertile through significant expenses and new agricultural works, and that these lands should therefore be exempt from the burden of paying tithes due to the new plantings, the Congregation of S. had added a limitation; and regarding the amount, until

Translated by churchlatin.ai, a product of Boyne Archives

the actual vineyard was lost, instead of one-twentieth, one-thirtieth was to be paid to the parish priest. The parish priest of S. had chosen to extend the right to collect one-thirtieth to all lands of the Family N., and therefore, even to the property for which the Family N. paid a fixed annual sum as tithes, a new question arose, which was brought before the Congregation of S. for resolution. Furthermore, the Congregation of S. considered it very difficult to collect the tithes in kind in this case, and ordered that the tithes be paid in money, delegating the determination of the amount to the Ordinary. Therefore, in its final decision, dated September 2, 1876, the resolution of December 12, 1874, was declared not to affect, nor to affect, the property or part of the property for which a fixed sum of money in the amount of 2,30 is paid annually as tithes. In the remaining property, or in the remaining part of the property, other than the area of 37.87 hectares on which the vineyard was recently planted, the parish priest retains the right to collect tithes on the fruits, both in quantity and quality, according to the old custom. Furthermore, the Ordinary shall settle the matter regarding the vineyard of 37.87 hectares by establishing a fixed annual sum of money in place of payment in kind. Following this resolution, the parties involved met before the Ordinary in order to determine the sum to be paid annually: and they had already reached the point where both sides were offering 1. See Volume VII, page 387, and Volume IX, page 388.

[*Latin ed. p. 327*]

Regarding the tithes, the sum of 327 Cento was established as the amount of the tithe; a dispute arose with two points of contention, one concerning the time from which the thirtyth should be paid, and the other concerning the expenses of the legal proceedings. The parish priest of Cento maintained that the thirtyth was due to him only from the date of the resolution, and that he had a right to demand the tithe on the twentieth part of the fruits, and also to be reimbursed for the expenses. Due to this new dispute, it was alleged that he had agreed before the Bishop to establish the amount of the tithe in the annual books of Cento. The family N. claimed that, from the date of the institution of the legal proceedings, that is, from the year 1868, they owed the parish priest the thirtyth in the annual books of Cento, according to the agreement, and that nothing was to be paid for the expenses according to the practice of the Holy Congregation of the Council. Thus, a dispute arose on three points: 1. Regarding the amount of the annual sum to be paid for the thirtyth. 2. Regarding the time from which such payment should begin. 3. Regarding the expenses of the legal proceedings. A summary of the dispute. The parish priest of Cento argued that the fault of the family N. was the reason why the amount of the tithe could not be determined. He stated that he had examined all the means that seemed appropriate for the matter. Indeed, to determine the amount of the tithe, it was necessary

Translated by churchlatin.ai, a product of Boyne Archives

to fully know which fruits from the property of the family N., subject to the tithe, were collected, and for this he had proposed three means: either that the family N. present notes of the income from the vineyard, or that they offer the books of administration, or that an expert indicate the average yield of the vineyard from the year 1868 to 1874. However, the family N. had presented nothing of this kind; rather, what they presented was so deficient and disorderly that it was impossible to draw any certain conclusion from it. Therefore, based on the information available and what was generally believed, he had, in accordance with the public voice and opinion, proceeded according to the law.

[*Latin ed. p. 328*]

328 Concerning the tithes, it was requested that a minimum of 400 livres be paid each year to protect the rights of the tithe collector. The second matter discussed concerned the right of the parish priest to demand tithes, recalling that the Congregation of the Holy See had granted this right, indeed, in the proportion of one-twentieth. The question posed was whether and how the parish priest had the right to collect tithes on wine in this case. The response given in the Congregation on December 12, 1872 was: affirmatively, according to one-twentieth of the revenues. And although, due to a new hearing requested by the N. family, the amount of the tithes was limited to one-thirtieth in the general assembly of December 12, 1874, this resolution was only intended to facilitate an agreement between the parties, because the response was a complement to the previous resolution of September 12, 1872, in which it was stated that it was pleasing to reach an agreement. Therefore, since an agreement was reached, it is clear that the agreement was initiated by the Holy See itself, and that the future time can be considered in relation to the past, because the agreement looks to the future, not to the past, unless there is an explicit mention of the past. It cannot be objected to the principle that the response of the Holy See should be considered as the true opinion: for it is not a matter of an opinion elicited in a strict legal judgment, but of a true, amicable agreement, and therefore the tithes from the year 1868 to the year 1874, according to the proportion of one-twentieth, are still to be paid. The third matter was resolved according to the well-known principle of jurisprudence: expenses in a lawsuit are to be borne by the one who was defeated. The N. family had opposed every right of the parish priest to collect tithes, while the Holy Congregation had maintained the parish priest's right to collect tithes as firm and unwavering, and therefore, the N. family suffered a defeat in the lawsuit. It cannot be argued from this that compensation should be granted because, before the Holy Congregation, reimbursement of expenses is only admitted in expressly stated cases: indeed, since the insistence of the N. family, which was infected with the idea of not paying tithes, is to be attributed to the fact

Translated by churchlatin.ai, a product of Boyne Archives

that the dispute was initiated, the rule must be applied in this case.

[*Latin ed. p. 329*]

Chapter I, concerning the greater petitions, states that the tithe is to be settled according to the decree of Gregory IX. Those who are punished for being importunate in their petitions are those who, after having presented their petition, insist on continuing the matter in court, so that those who repeat their requests without cause are condemned to pay the expenses of the opposing party.

Regarding the family N., this question concerned the amount of the canon to be paid in the future, and there could be no further doubt about it. The Bishop A. testified that the parties had agreed that, "having confirmed the canon of 230 scudi for the 'part of the property' which the resolution of December 12 did not affect, for the remaining part of the vineyard, they would agree on an annual canon of one hundred 'libellae' to be paid in place of payment in kind." The fairness of this sum is derived from the confession of the Pleban to the Bishop, who wrote: "The average tithe to be collected from family N. can be increased to one hundred 'libellae' annually, as has been established in the meetings held before His Excellency." This sum is even more fair, given the fact that the Pleban himself, on September 28, 1868, requested a reduction of the number of "cados" (wine casks) to 21 for the tithe, which was to be paid in the twentieth part. However, according to the public price list of wine for the years 1865-74, the price was 4.15 "libellae" per "cado," so that the price of 21 "cados" would not exceed 100.80 "libellae." If the tithe were to be calculated on the basis of the twentieth part of this sum, it would be reasonable to say that the agreed-upon sum of one hundred "libellae" annually contains a fair amount, after the Holy See decreed that the thirtieth part was to be paid.

It is not to be doubted that the response of the Holy Congregation refers not only to the future, but also to the past, if the sentence is to have effect from the time the judgment was introduced. It is well known in law that the judgments of judges do not create a new state of affairs, but declare what the state of affairs is; and that these judgments are to be considered as having effect from the date of the introduction of the judgment. Thus, the Holy Roman Rota, in decision 672 before Marini, number 5, states: "Therefore, it is clearly apparent from what has been stated so far that, since the year 1826, the Collegiate Churches of Amandula and Montis Florum have been admitted to the case, and have contested the matter with Cap. Mum-

[*Latin ed. p. 330*]

330 Concerning the tithes with regard to Llantarnam, it followed, spontaneously, the resolution or judgment which was issued in the year 1732 by the Holy Congregation of Rites concerning all the aforementioned col-

Translated by churchlatin.ai, a product of Boyne Archives

legiate churches, that the matter should be referred back to the original text in Law 18, paragraphs concerning claims, and in Law 13, paragraphs concerning donations. However, the judgment issued by the Holy Order, which had become a final judgment through the addition of a clause and further proceedings, had considered the matter in dispute in the year 1868. Therefore, the Holy Order should refer the matter back to the year 1868. The request made by the parish priest concerning the agreement proposed by the Most Reverend Fathers in the Congregation on September 14, 1874, is irrelevant to the matter. For, it cannot be denied that the matter had been brought to judgment concerning the amount of the tithe to be paid: since the Family N. in the year 1868 requested from the Holy Congregation "before the collection of the fruits of the current year 1868, that the Most Reverend Fathers would deign to indicate whether and in what amount the right of tithe belongs to the parish priest." This constituted the basis for the Holy Congregation's resolution of December 12, 1874, which contained the true judgment. Indeed, it was necessary to bring the case again before the judgment of the Holy Order, because it was impossible to reach an agreement with the parish priest, and therefore the matter was brought before the Holy Order for a legal decision. Regarding the third question concerning expenses, he stated: it is in vain for the parish priest to assert that the judgment favors him alone; for the merit of the case was solely constituted by the reduction of the tithes, which the parish priest refused to grant, and which the Family N. urgently requested. He had obtained this to a large extent, so that the matter reached the point of compensation for expenses. However, before the Holy Congregations, there was never a case for the reimbursement of expenses. With regard to the Holy Congregation of the Council, it was reminded in the Roman case, in the documents of Pius concerning expenses of June 16, 1827. For it is accepted in cases that are brought before this Holy Order, that the expenses of the lawsuit should not be reimbursed to those who litigate in a frivolous manner, as is proven by numerous examples in the documents of Detronen, July 6, 1726.

[*Latin ed. p. 331*]

Regarding the liquidation of tithes, 331. Whatever may be the causes that operated at a more remote time, the law by which we live today is to be found in the Rule to be observed in cases presented before the Holy Congregation of the Council, in due order of law, which was issued on September 27, 1847, in which, under § 24, it is stated: "In the cases of which we have spoken in §§ 12 and 22 [which are contumacy and restitution in full], and in others "in which, according to the decrees of the Holy Congregation, the reimbursement of expenses takes place (that is, in cases of marriage, support, offenses, and spoliation), the prevailing party shall present a memorandum to the Most Reverend Secretary for his approval, and shall provide it with the appropriate documentation according to the laws in

Translated by churchlatin.ai, a product of Boyne Archives

force." Except for these cases, never, even by those who litigate rashly, shall expenses be reimbursed.

Having discussed both of these matters, the following doubt was proposed to the Fathers: Whether and how one should adhere to or depart from the decisions in the case. The Holy Congregation, after general meetings held on March 28, 1878, decided that the following should be answered: In the decisions concerning the annual payment of one hundred livres from the day the lawsuit began, excluding any taxation of expenses.

FROM THESE, ONE MAY GATHER:

I. That agreements initiated only by words are to be observed in ecclesiastical law.

II. That an agreement initiated only by words is not to be revoked, if the care for arranging a settlement has been delegated to the Ordinary, with the Ordinary himself testifying to this.

III. All the more, the parties are bound by such an agreement, if it can be shown that the agreement was just and equitable.

IV. That the resolutions of the Sacred Congregation of the Council, which contain the true judgment, are to be traced back to the day the lawsuit began.

1. This rule has been explained at length in Volume IX, pages 558 and following.

[*Latin ed. p. 332*]

332. The decree concerning tithes must contain a judgment regarding the matter over which the dispute arose. V. This principle is particularly relevant when the resolution has been definitively established through a clause and further proceedings. VI. Generally, in cases before the Sacred Congregations, and especially before the Sacred Congregation of the Council, no allowance is made for expenses, except in cases expressly provided for by law. VII. The law currently in force is derived from the regulation issued by the aforementioned Sacred Congregation on September 27, 1847. MISSES FOR THE PEOPLE. On March 3, 1877, and August 24, 1873. Summary of the case. The Bishop of the Diocese of S. presented a report on his diocese, outlining the following: "The parish priest of the city of S. serves as the vicar of the Bishop in his pastoral office. He is appointed and chosen by the Bishop without consultation, and is always one of the chapter members, provided only with a canonical benefice. There is no provision for a residence or dwelling for the parish priest, and the income from the vestments is so meager that it barely covers the expenses associated with the pastoral office, including books and official communications. For this reason, the predecessor of the Bishop declared to the urban parish priest that he was not obligated to offer Mass for the people, and in fact, he does not offer

Translated by churchlatin.ai, a product of Boyne Archives

such Masses." With these facts presented, two questions were proposed for clarification. In response, the Sacred Congregation issued a decree stating: "To the Bishop who transmits the declaration of his predecessor regarding the exemption of the urban parish priest from the obligation to offer Mass for the people; and to report whether the same parish priest or vicar is permanent or removable at the Bishop's pleasure, and what has been the previous practice." And again, "Whether the Bishop for the time being is truly and properly..."

[*Latin ed. p. 333*]

"Three hundred and thirty-three Masses are offered for the people; the only parish priest of the city." The Bishop replied: "The declaration of my predecessor, concerning the exemption of the city parish priest from the obligation of applying the Mass for the people, was only verbal, and the actual canonical parish priest of the city is now entirely private, and therefore, such an example cannot be transmitted to this Holy Congregation. Furthermore, he is not a parish priest properly so-called, nor a perpetual vicar, but only a temporary one, removable at will. The previous practice was that the city parish priest was never obligated to apply the Mass for the people. The Bishop, for the time being, is not, nor ought to be, truly and properly the only parish priest of the city, since all actual care, and all rights, duties, and offices pertaining to the parish, with regard to the administration of the sacraments and other functions, as well as the custody and description of the parochial books, and documents extracted from them, reside with the aforementioned parish priest; so that, for example, for the validity of marriage, civil authority requires the assistance of the parish priest, and the assistance of the Bishop alone is not sufficient."

Synopsis of the discussion: TEMPORARY VICARS ARE INVOLVED. The Council of Trent, citing the sacred witnesses of both the Old Testament, Leviticus, chapter 9, verses 6 and 7, and the New Testament, John, chapter 2, verses 15, 16, and 17, and Acts, chapter 20, verse 28, indicates that the obligation of pastors to apply the Mass for the people descends from a divine precept. And Session 23, chapter 1, De ref., states: "Since it is divinely commanded that all to whom the care of souls is entrusted should recognize their sheep, and offer sacrifice for them..."

In law, the pastors who are bound to apply the Mass on feast days are the parish priests who actually exercise the care: whether they are perpetual or temporary, and whether they have a suitable stipend or not. For the parish priest is obligated to apply these Masses not because of...

[*Latin ed. p. 334*]

334 Masses offered for the people are fitting, but by reason of office. However, it is demonstrated by threefold proof that those who are actively engaged in the care of souls, even if removable, are bound to offer a Mass

Translated by churchlatin.ai, a product of Boyne Archives

for the people: namely, from the Council of Trent, from the Constitutions of the Apostolic See, and from the resolutions of the Sacred Congregation. The words of the Council of Trent, as cited above, are general, clear, and open to interpretation. Regarding the Constitutions of the Apostolic See, Benedict XIV is to be heard, who in the Constitution *Cum semper oblatas*, § 4, states: "Since the sacred Council of Trent, in order that the care of souls may not be neglected, does not merely command the Bishops in one place to choose and appoint suitable Vicars with the assignment of certain revenues to exercise that same care whenever it is necessary, as is seen in Session 5, chapter 2, on reforms; Session 7, chapters 5 and 6; Session 21, chapter 6; but it also frequently happens that, when a parish church is vacant, a Vicar is likewise appointed by the Bishop to fulfill the duties of that church until a new Rector is elected, as the same Council of Trent commands in Session 24, chapter 18, on reforms; some of these Vicars endeavor to exempt themselves from the aforementioned obligation, either because habitual care rests with another or others, while they exercise only actual care; or because they are removable at the pleasure of others, or because they are engaged in this kind of care only for a short time... Therefore, our opinion and judgment, as has been judged and defined by the aforementioned Congregations on several occasions, is that all and each who are actively engaged in the care of souls, not only secular pastors and vicars, but also regular pastors and vicars, all and each of those mentioned above, and others equally, even those worthy of special and individual mention, are bound to offer the parochial Mass for the people, as is fitting, entrusted with their care; § 5. Some, however, in order to avoid the fulfillment of this obligation, often allege that sufficient revenues are not available to them for their parish; others appeal to long-standing custom, claiming that neither they nor their predecessors have done so for a long time."

[*Latin ed. p. 335*]

Masses for the people, 335, "which they claim have never been in use." We, however, extend our approval and confirmation to the aforementioned resolutions of the Congregation of Councils, and, as it is necessary, by Apostolic authority, we again decree and declare that it is permissible for Rectors or others, as mentioned above, who have charge of souls, to apply the aforementioned contributions, even if they are lacking in suitable revenues, and although an ancient or even long-standing custom may have prevailed in their dioceses or parishes, nevertheless, the same must be applied entirely by them in the future. Concerning the most recent Constitution of the Most Beloved Pope Pius IX. Many resolutions of the Holy Congregation could be cited to confirm the same. And this, especially, because the Rector, in the already canonical case, is sufficiently provided for with a prebend, and enjoys certain stipends. However, the declaration of the predecessor Ordinary, regarding the exemption, should not be disregarded;

Translated by churchlatin.ai, a product of Boyne Archives

for it is merely verbal and has been made entirely in a private manner and asserted only by the Rector. This document is not authentic, because it is a statement made by one person, in his own cause and to his own advantage. Nor could the Bishop exempt the same Rector from the obligation of the Mass, since, although he is a removable vicar, he is nevertheless truly and properly the actual Rector; as the Bishop declares in open words: "The Bishop is not, nor should be, the true and proper, sole Rector of the city, since all actual care, and all rights, duties, and official functions, concerning the administration of the sacraments and other functions, as well as the custody and description of parochial books and documents extracted from them, reside with the aforementioned Rector, so that, for example, the validity of marriage requires the assistance of the Rector, and the assistance of the Bishop alone is not sufficient."

THINGS FAVORABLE TO THE REMOVABLE VICAR. However, custom seems to offer some argument in favor of the removable vicar. Custom, in order to be maintained against the law, must be...

[*Latin ed. p. 336*]

336. Masses offered for the people, reasonably and legitimately prescribed. Indeed, a custom, though considered contrary to the law in its origin, and which, of itself, may seem unreasonable, because it proceeds against a law which is always presumed to be reasonable, nevertheless, once established in fact, or in its formal existence, is regarded as reasonable, and possesses the force of law, abrogating or diminishing the very law itself. A custom is truly said to be legitimately prescribed if it has endured in fact, without interruption, for at least ten years, as the Bishop testifies in the following case: "The previous practice was that a parish priest in the city was never obliged to offer a Mass for the people." The Holy Council has often confirmed this as true, and has affirmed it in several cases. Indeed, in Camerino, in the matter of Masses for the people, on December 16, 1820, the following was stated: "In the town of S. Anatolia, in the diocese of Camerino, there was a collegiate church of S. Martini, whose property had been seized by the Italian government. Four of its canons, who were said to be from the original foundation, habitually had charge; the actual charge, however, was exercised by a Vicar, chosen by the Chapter and approved by the Ordinary, to whom the canons paid a salary of sixty scudi; these canons, in turn, offered Mass for the people on feast days, and also fulfilled other obligations pertaining to the collegiate Mass, which were attached to the property of the collegiate church. After the property of the Chapter was seized, in the year 1812, a pension of ninety scudi was assigned to each canon, which they had previously received annually from their own resources, amounting to approximately 11 per year. To the Vicar, however, the same salary of sixty scudi was paid annually. The canons then believed that they were adding

Translated by churchlatin.ai, a product of Boyne Archives

a free pension to themselves, and that they would no longer be obliged to fulfill the obligations of Masses in the future, and to offer Mass for the people. Thus, the Vicar, who received the same amount as in the previous salary, abstained from offering Mass for the people, so that approximately five hundred Sacrifices remained unfulfilled." Regarding the first question: "Whether, and to whom, the obligation of offering Mass for the people belongs in this case." The response is:

[*Latin ed. p. 337*]

Masses for the people, number 337, the question was: "Affirmative, for the four Canons of the first foundation, 'according to the form of custom'." 1 In the case under consideration, there is nothing available to offer, nor is there a parochial residence, and the income from the stall is very meager. Furthermore, it clearly appears that the declaration of the predecessor Ordinary, even if verbal, is accepted by the current Ordinary. However, the fact that civil authority requires the assistance of the proper Parish Priest for the validity of marriage does not harm the Parish Priest; for it is no secret that civil power is incompetent in judging such matters. On the other hand, it is clearly known to all that the Bishop, within his Diocese, is by Divine Law the first and principal ordinary minister of all the sacraments. Therefore, it seems that the obligation of applying the Mass for the people belongs to the Bishop, as Parish Priest, and not to a removable Vicar. Regarding the second doubt, it appears that the Bishop can satisfy the double obligation with a single Mass sacrifice; indeed, in Camerino, the Vicar Curate is excused from celebrating Mass according to the observance, which is admitted without contradiction; but the Parish Priest in the present case is burdened with the Mass for the people, and cannot be excused from this obligation by a contrary custom or by a lack of a parochial benefice. But consider, brothers, the difference between one case and the other. In Camerino, the habitual care was with the Chapter, while the actual care was exercised by the Parish Vicar. In the present case, there is no habitual care with the Chapter, but only a Vicar of the Bishop, or the actual Parish Priest. In Camerino, those who apply the Mass have habitual care; in our case, unless the Parish Priest applies the Mass, the people are deprived of this Mass. It is indeed contrary to the law for Parish Priests to be completely freed from the application of the Mass for the people by a contrary custom; but the Sacred Council has often judged that it was not the intention of the Fathers of Trent, nor of Benedict XIV, that this custom should be abolished, by which those who have habitual care celebrate the Mass for the people, in place of the Parish Priest, either always or at alternating times. For while the sacred canons prescribe the obligation of applying the Mass for the people, they seem to have intended this primarily so that the people would never be deprived of this spiritual benefit, and not so that Parish Priests would be compelled to celebrate the Mass for the people themselves, so that this obligation

Translated by churchlatin.ai, a product of Boyne Archives

could not, even by long-standing custom, be transferred to Vicars or other beneficiaries. And therefore, while the custom is maintained in Camerino, the spirit of the Holy Canons remains intact; if the custom were maintained in the present case, the Holy Canons would be frustrated, because no one would say the Mass for the people. Acts, volume XI, page CXXVII, line 22.

[*Latin ed. p. 338*]

Masses offered for the people number 338; we see that in a single action, a double precept is fulfilled. Just as he who is obligated to recite the canonical hours by reason of his order, simultaneously fulfills the ecclesiastical benefit with a single recitation. The same can be said of the fast on Friday; if, on that day, the four seasons of the year coincide, and the vigil of a saint occurs, a single fast fulfills three obligations, namely, the vow and the precepts of the Church for those days. On the other hand, it would seem that the Bishop does not fulfill a double obligation with a single sacrifice; consider the example of a parish priest who is also a canon. It has been investigated whether a single sacrifice of a conventual Mass, by which a canon is bound, suffices to fulfill the obligation of offering a Mass for the people, to which he is bound as a parish priest by justice.

1. It is also worthy of note the declarations recently published by the Sacred Congregation of Propaganda Fide. To this Sacred Congregation, among other things, was proposed the following question, which is the eighth: Does the Bishop of Dumorens, who exercises the office of parish priest, fulfill his obligation, which adheres to him as a parish priest, when he offers a Mass for his diocesans? The Fathers responded: To 8, according to what has been explained, negatively, and in the following sense: if the Bishop has no vicar in the city of Neurry who administers that parish, he is bound to establish one there, and even through him.

2. 1 For this case, the examples given above, by which it has been demonstrated that a double precept can be fulfilled in a single action, are not applicable; for those examples are to be understood outside the matter of justice. But just as a canon is bound to the conventual Mass, so too, by justice, a parish priest is bound to offer a Mass for the people. If there are multiple obligations of justice, they cannot be fulfilled in a single action, because in matters of commutative justice, or in debts of justice, equality of thing to thing is considered. Thus, if Peter owes Paul one hundred gold coins by contract, and another one hundred due to unjust damage, he would not fulfill both obligations by giving one hundred once, but he would be bound to give two hundred. Otherwise, it is in matters of legal obligation, or in legal debts; because there, the intention and will of the legislator are considered, which can often be expressed in one and the same act. By benevolence, it is presumed that the legislator has permitted and is content that a single action should suffice for several obligations simultaneously.

Translated by churchlatin.ai, a product of Boyne Archives

Such declarations are found in Volume I, page 389 of these ephemerides.

[*Latin ed. p. 339*]

The "Missa pro populo" (Mass for the people), amounting to 339, must also fulfill the obligation of offering a Mass for the people, taking into consideration, however, that, according to § 4 of the Constitution *Benedicti XI, Cum semper oblatas*, it must have regard for what is appropriate for such an obligation. With these premises established, the following questions were posed:

I. Is the Bishop or Parish Priest obligated to offer a Mass for the people in this case? And, to the extent that the answer is affirmative regarding the Bishop:

II. Does the single sacrifice fulfill the double obligation in this case?

RESOLUTION:

After deliberation, the Sacred Congregation, on August 24, 1877, judged it fitting to respond as follows:

To I: Negatively, to the first part; affirmatively, to the second part, and in its entirety.

To II: As provided in the first.

FROM WHICH, THE FOLLOWING ARE UNDERSTOOD:

I. All pastors to whom the care of souls has been entrusted are obligated, by divine precept, to know their own flock, to feed them with the preaching of the divine word and the administration of the sacraments, and to offer the sacrifice of the Mass for them.

II. By the name of pastors who are obligated to offer a Mass for the people, all parish priests are included who actually exercise the care of souls: whether they are permanent or temporary, and removable at will, or whether they are secular or regular.

III. No one who has the care of souls is exempt from the obligation of offering a Mass, even though it is supported by a contrary and unforgettable custom, or is lacking in appropriate and sufficient revenues; and because Parish Priests are burdened with this obligation not by reason of appropriate means, but by reason of their office.

[*Latin ed. p. 340*]

340 Masses for the people. By divine law, the entire office of feeding the flock and of offering the Mass for it, belongs to the Bishops; by ecclesiastical law, a part of this office is entrusted to the parish priests; and from this entrustment it follows that the parish priest becomes the proper pastor of the assigned flock, and is immediately bound by obligation to offer the sacred Mass for the people entrusted to him. V. The parish priest is not

Translated by churchlatin.ai, a product of Boyne Archives

far removed from the application of the Mass for the people; indeed, he is truly and properly the one to whom the Bishop has entrusted a part of the flock, so that he may properly feed it; and he cannot be dispensed from this obligation by the Ordinary. MARRIAGES. On June 10, 1876, June 15, and August 24, 1878. Summary of the facts. After the customary announcements, in the year 1842, on December 29, a marriage was celebrated at night between Conceptus G. and Vincentia N. Who, after twenty-two years from the celebration of the marriage, reported to the Episcopal Curia that she had begun, from her early youth, to desire a certain young man, and had firmly resolved to marry him. However, because of the wicked behavior of her father, because of the cruel beatings with which she was almost killed many times; because of the rages with which, on more than one occasion, he threatened to kill her and her beloved with a weapon in his hand, unless she would marry Conceptus; and finally, because of the pleas of her mother and friends, she finally pretended to consent to the marriage. She stated that such threats were not lacking on the night that she was taken to the Church; for when her father was still present, he did not cease to threaten before the altar, showing a dagger. Indeed, the father became more certain that the daughter, after the celebration of the marriage, would not obey his will, and he went to her house and, striking her with beatings, caused her to...

[*Latin ed. p. 341*]

Marriage 341 was celebrated, and the husband, without excluding any violence, was obliged to perform the marital act; as a result, she became pregnant and gave birth to a girl. Furthermore, she recounted that there were constant quarrels and disagreements between them, until, after six months of marriage, she openly revealed her hatred for him and her love for another man, and she fled from her husband. Regarding this matter, after being presented with a petition, she requested that this marriage, which had begun through force and fear, be declared null and void. This petition was presented on November 10, 1864, and, for various reasons, the judgment of this case was repeatedly postponed until December 18, 1869; on that day, after a proper examination of the case, the Diocesan Tribunal rendered a judgment declaring the marriage null and void. The Archdiocesan Tribunal confirmed the appealed judgment. When the defender of the marriage, before the Archdiocesan Tribunal, was displeased with this confirmation of the judgment, he appealed to the Holy See. This case, due to the poverty of the spouses, was treated with leniency, economically speaking, but nevertheless, with the opinions of theologians and canonists, as well as the objections of the defender of the marriage, taken into consideration; we present a summary of these.

1. The learned theologians and the sacred tribunals all hold that a marriage celebrated under grave fear, in which the man, free from any external

Translated by churchlatin.ai, a product of Boyne Archives

coercion, was unjustly compelled to enter into the marriage, is null and invalid. *S. Bonav. quaest. i n. i, D. Tkom. 4 dist. 29*

OPINION OF THE THEOLOGIAN. "It must be noted that the theologian, the canonist, and the diligent defender of the marriage strongly criticize the Diocesan Tribunal for having, by pursuing trivialities and falsehoods, wasted five years (while the woman was living in concubinage), but completely neglecting the substantial matters and those things that were most necessary for ascertaining the truth. For example, the spouses themselves were not subjected to investigation; nor were the parents of the complainant, who were said to be the authors of the violence and fear; nor were witnesses summoned, nor were relatives heard, who had been present at the wedding, nor were the reasons presented by the defender of the marriage sufficiently heard before the judgment was pronounced by the Diocesan Tribunal. Therefore, it appears that the Vicar Capitular, relying on the testimony of certain witnesses, who often contradicted each other, rendered a judgment. Hence, it was necessary for the Holy Father to correct the proceedings in order that the truth could be safely investigated."

[*Latin ed. p. 342*]

342. Concerning the validity of marriage, question 3, articles 3 and 4. For if the laws of nature require that actions be free, so that an obligation may be firm by which we are bound to give or do something, how much more is freedom required for entering into marriage, which contains a perpetual union of life and a habit of living together? However, in order that no marriage may be declared invalid, the violence and fear must be such as to be able to overcome a steadfast man and woman. Therefore, as the Theologian says, all our inquiry must consider whether violence and fear were present in the act, and whether they were of such a nature as to extort consent, so that a woman was forced into marriage against her will. And in order to more easily discover this, the Theologian considered it necessary to examine the circumstances and acts that preceded, accompanied, and followed the marriage. Regarding the preceding circumstances, the Theologian stated that the witnesses sufficiently proved that the father used beatings and atrocious threats to instill fear in his daughter, in order to extort her consent for a marriage she did not desire; all of which entirely invalidate the marriage, both according to civil law and according to pontifical law. The Praetor declared in *Institutes* 1, 1, "that what is done under fear will not be considered valid." It is also deduced from the chapter on Letters concerning the Marriage of Minors: "Where marriages are declared invalid, when a daughter, unwilling and forced by the threats of her parents, is compelled." Many other passages could be cited, but Sperell, in decisions 73, number 67, aptly states: "But in our case, even beatings, which indeed were not necessary to prove fear, since threats alone, together with reverential fear, are sufficient, not only in a timid woman, or

Translated by churchlatin.ai, a product of Boyne Archives

in a girl, as all acknowledge, but also in an adult man." Sánchez, book 4, section 6, number 8. Guttierez, on marriage, chapter 44, number 40. All the witnesses, although not entirely in agreement on every detail, uniformly testified about the weapons and beatings. But in our case, the beatings and threats were carried out by the father, who was able to inflict them on his daughter, as he had often done in the past, and he rightly terrified her. The Rota, in decision 38, number 3 and following, part 16, recent, states: "By..."

[*Latin ed. p. 343*]

Marriage 343: "A fear directed towards a specific person, such as the fear 'of losing one's liberty...' Indeed, without any other proof, a mere suspicion apprehended in the mind is held to be a just cause for fear, and Sánchez, among others, points this out. For, in order to determine the effect of which we are speaking, the quality of the person instilling the fear must be considered." Parents can indeed hinder or encourage marriage through gentle means, but they cannot achieve this by using force or instilling fear; for marriage is a certain perpetual servitude, and therefore, when a person is of free condition, they cannot be compelled by a parent to enter into this servitude. Nor does Saint Thomas admit that a father has the power to obligate his daughter to marry a specific person. Such a marriage is not to be considered valid, even if constant exhortations and protests are made by the woman before the marriage, for, as Mascard states in *De prob. concilii*, book 2, chapter 1054, number 11: "He who uses a protestation, at least declares that he is not consenting to the contract." The greatest aversion that a woman feels towards a particular person is a strong argument for a coerced will. Speaking of the conjectures that accompany marriage, the theologian states that it must be established by the testimony of witnesses that the fear persisted even up to the altar, although, according to the law, it is not strictly necessary that threats be explicitly made at the time of the marriage contract. It is sufficient that they were made beforehand, because it is presumed that the fear that was previously instilled continues, as stated in *Rota coram Ludovico*, decree 326, number 30: "It does not matter that they were not made in the actual act of contracting the marriage, but beforehand." And in *Corpus Coccin*, decree 227, number 5: "For, since fear had already been instilled once, it was presumed to continue." Therefore, it seems clear that the marriage in Vicenza was entered into through this fear; and nothing is more contrary to the will than this, as stated in *Leges matrimoniales*, title *De regulis iuris*, chapter *Super hoc*, and there, Abbot [name not provided], on renunciations. Regarding the actions that follow the marriage, in Grado, [name not provided] states...

[*Latin ed. p. 344*]

Marriage 344. The theologian strongly affirms the woman's fear, because, having entered into marriage, she never did so spontaneously, but rather

Translated by churchlatin.ai, a product of Boyne Archives

by force, and was retained in the nuptial chamber against her will. Therefore, since all these acts have been confirmed by witnesses, and since they demonstrate the woman's contrary disposition and the fear instilled in her by her own father, it seems that the marriage, in this case, was contracted under duress. It cannot be objected that the marriage, contracted under fear, was made valid by cohabitation and sleeping together for a certain period of time; for the Sacred Congregation declared that, after the Council of Trent, it is necessary to contract the marriage anew before the parish priest and witnesses. This was decreed in the documents of Compostela on December 2 and 16, 1634; as is stated in book 13 of decrees, pages 130 and 140, and on September 13, 162c: "The Sacred Congregation judged that a marriage contracted by a daughter, through fear instilled by her mother, was invalid, even if the woman, having suffered fear, remained with her husband for many years after her mother's death and bore children." And the Sacred Rota, decree 403, number 13, part 18.

1. See Appendix I, in Volume II, page 52 and following, where the distinction is made between a hidden impediment and a public one for the purpose of validating a marriage. If the nullity arises from fear and is hidden, and the marriage has been celebrated according to the formalities prescribed by the Council of Trent, then, once the fear has been removed, it can be validated by the reiterated consent of the spouses; and it is not necessary to contract it again with the same formalities, as is stated by Fagnanus in chapter "Those who give their word," number 14, on Matrimony. And Sánchez, in his commentary on the matter, book 2, section 37: "Finally, it must be said that that marriage, which was invalid due to a hidden impediment, can be validated by the marital affection between the spouses, just as it is validated by a new, hidden consent. This is proven because the Council of Trent, Session 24, chapter 1, does not include this case; and therefore, it is left to the disposition of common law; therefore, since according to common law such a marriage would be validated by marital affection, according to the chapter 'if those who give their word,' it will be the same here, considering the decree of the Council of Trent." And Gonzalez, in his commentary on the title on betrothals and marriages, in chapter 21, number 5, makes the same distinction, explaining why, in a marriage that is null due to a hidden impediment, it is not necessary to repeat the formalities of the Council of Trent. "Because the reason why the Council decreed that a marriage is not valid unless it is contracted before the parish priest and witnesses is to avoid grave sins arising from clandestine marriages; this reason ceases in the present case, because the previous marriage is considered invalid in the eyes of the Church; therefore, it is not necessary to repeat the same formalities, since the marriage is

Translated by churchlatin.ai, a product of Boyne Archives

ratified due to a defect in consent, or a similar impediment."

[*Latin ed. p. 345*]

Marriage, Volume 345, Part 2, recently published: "However, in the case of a woman, the impediment of fear is excluded, if 'she has always protested against the violence done to her in order to contract marriage, and has finally fled from the man for this very reason.'" OPINION OF A CANONIST. The Canonist is surprised that, after two judgments from the Curial tribunals, namely the Episcopal and Archdiocesan ones, this case has been brought before the Holy See for a third instance; since it is proven by the testimony of many that the woman was subjected to great fear, and that she appeared to consent to the marriage only in appearance. And although the testimonies, in some cases, differ among themselves, he believes that this can happen in matters of little importance, so that the truth may emerge and be discovered. He says that, from the procedural records, not only the form of the Benedictine Constitution is lacking, but any judicial form prescribed by law, so that the truth of the matter may become clear amidst the conflict of the parties; it is therefore not surprising that both tribunals declared the marriage null. But if one considers for a moment what is contained in the records, it is easily seen that the marriage was valid, because there was no true coercion, as is indicated by various testimonies. Moreover, since substantial elements are lacking in the records that would clearly proclaim the validity of the marriage, it is impossible for the judgments of this Marriage Tribunal, which declare the marriage null, to be considered valid. But even supposing that some coercion emerged from the testimonies, it remains to be proven that the force and fear were such that they completely deprived her of freedom in the act of marriage. But if the history of the events is examined more closely, and compared more carefully with the established principles of law, the truth emerging from these facts will be evident: the fear instilled was not of such a nature as to outweigh free consent in the celebration of the marriage. For it is certain in law that, in order to constitute an impediment removing the marriage, from the head of force and fear, it must be absolutely the case that the fear itself is of such a nature and power that it is capable of disturbing a steadfast man, and of depriving him of the freedom of consent. For not every instance of fear deprives one of freedom, even though the act of consent is ejected. OBSERVATIONS OF THE DEFENSOR VINCULI.

[*Latin ed. p. 346*]

346 Marriages are invalid only when something in the very act itself disturbs the mind; so that, under the pressure of fear, constancy is lost, and all deliberation is abandoned, as Cuiacius states in his commentary on the title concerning marriage, canon 1, "Concerning causes" – there – "Fear

Translated by churchlatin.ai, a product of Boyne Archives

is signified by the word as terror, dread, prostration, disturbance, shock, consternation, trembling of the mind, from which affections we lose and abandon ourselves. Therefore, rightly does Julius Scaliger deduce that constancy is lost and all deliberation is abandoned because of it." For the will of a man is so changeable that what he rejects beforehand, he may freely embrace afterward; therefore, even if some coercion preceded the marriage, unless it is clearly proven that this coercion continued to exert violence and that the fear arising from it occupied the person in the very act of marriage, that preceding coercion does not invalidate the marriage in any way; so the Roman Rota decided in case 600, number 2, part 4, recently. For fear is not a certain state of the mind, nor an impression that, once impressed, always adheres to the soul, like a mark on a machine. Therefore, it must be demonstrated that the cause of the coercion did not precede remotely or at an uncertain time, but very recently and constantly held the mind of the person in its grip; which is not the case here. Furthermore, another condition must be present in the coercion, in order that the fear is judged to fall upon a steadfast person. It must be the case that the one who instills fear is able to carry out threats, indeed, is even accustomed to carrying them out; while the one who suffers the coercion is utterly unable to evade the threats; Sánchez, book 4, section 2, number 1. However, if one considers the disputes between a father and daughter, one will easily see that the daughter's obstinacy was more powerful than the father's fierce cruelty; so that, while she truly did not want to, she resisted fiercely, and when she yielded to the will of her father, she yielded because she wanted to, and therefore she gave herself to the marriage, because she wanted to; she was not incapable of resisting the coercion of her father, nor was he accustomed to bringing his clamorous threats to fruition. The young woman was poor and destitute; the father sought to force the unwary daughter into misery; hence the disputes.

[*Latin ed. p. 347*]

Marriage 347: Hence, quarrels arise. Did the father prevail, or did he prevent the young man from frequenting the family? Neither. Therefore, as Sánchez advises, in order to properly assess fear, "the power of the one who instills fear must be considered, as well as the one who suffers it." It is clear that the fear experienced in Vicenza was not properly balanced with the young man's own firmness. Furthermore, if it is also necessary to investigate whether the one who instills fear is accustomed to carrying out threats, or whether the person is easily intimidated and, once angered, carries out little or nothing of what they threaten, then it is evident that the young man had nothing to fear from the father's shouts, except the paternal chastisement, which, as is often the case in working-class families, is a daily occurrence. Moreover, from the long cohabitation of the spouses and from the marital union, through which the daughter was born, the

Translated by churchlatin.ai, a product of Boyne Archives

defender of the bond argues that the marriage, however contracted by force and fear, was nevertheless validated. And this is verified by civil law, even after Trent, under certain conditions. The required conditions are that the one ratifying the marriage knows that it was null; for if, through error, he believes that the previous marriage was valid, and he cohabits with her or engages in marital intercourse, the previous marriage will never be ratified. Another condition is that the cohabitation must be prolonged; however, the length of this time must be determined by prudent judgment, considering the opportunity to flee and the delay in cohabitation. Nevertheless, a marriage that is invalid (after the sanction of Trent regarding the presence of the Parish Priest and witnesses) is ratified if the county is involved; namely, if the impediment of fear was hidden from both the Parish Priest and the witnesses. Therefore, the defender of the bond, in an absurd hypothesis of the invalidity of the marriage of Vicenza with Concepto, argues that the same marriage was fully validated. Because the woman freely had intercourse with the man, thereby ratifying the marriage; because the nullity of the marriage was known to the woman, so that, with full knowledge of the cause, she cohabited with the man; finally, because the presumed nullity of the marriage was so hidden from the Parish Priest and witnesses that it could not have been renewed in the presence of the same Parish Priest and witnesses; because...

[*Latin ed. p. 348*]

348. In the public opinion, marriage was considered to be both valid and legitimate. With these and other matters brought to light, the following point was to be examined: Whether the opinion of the Congregation of Holy See and Holy Mother Church should be confirmed or refuted in this case.

RESOLUTION. After discussion by the Sacred Congregation on June 10, 1876, it was decided to respond: "We request that the Most Holy Father grant permission to correct the acts of the process, and that, once the acts are completed according to the instructions, the matter be brought forward."

After the Most Holy Father granted permission to correct the acts, and after the instructions were followed, the canonists and theologians who had previously expressed an opinion against the validity of the marriage were again consulted. Thus, the question was again raised under the same formula, namely: "Whether the opinion of the Congregation of Holy See and Holy Mother Church should be confirmed or refuted in this case." To this question, the same Sacred Congregation responded on June 15, 1878: "Affirmatively to the first part, negatively to the second."

On August 24, 1878, the same question was again raised with the following doubt: "Whether one should adhere to or recede from the decisions made in this case." The response to this doubt was: "In the decisions."

Translated by churchlatin.ai, a product of Boyne Archives

1. From which, one may gather: I. That, by its own right, there is no marriage entered into by force and fear; because, if it were not inherently invalid, it could not be rescinded by a judge, since, according to divine law, it establishes a perpetual bond.

1. For the examination of both spouses, as well as the hands of seven witnesses on each side, through interrogations presented by the one seeking to invalidate the marriage.

[*Latin ed. p. 349*]

Marriage 349 II. However, not every fear suffices to dissolve a marriage; rather, it must be such that it falls upon a steadfast man, and through which the consent, entirely removed from the act of contracting, is proven. III. No marriage contracted under a hidden impediment by force and fear, according to the ceremonies of Trent, can be validated; but after the fear is removed, and with the reiterated consent of the spouses, it is necessary to contract it anew with the same ceremonies. IV. The reason for this is that no marriage with a hidden impediment is considered valid in the eyes of the Church; therefore, to validate it, the presence of the parish priest and witnesses is not required; which was prescribed by Trent only for the purpose of avoiding grave sins arising from clandestine marriages. V. The marriage in question was not null because of a hidden impediment of force and fear, but because of a public one; therefore, it could not be validated, neither by prolonged cohabitation, nor by marital intercourse with affection, but it was necessary for the parish priest and witnesses to be present again. VI. Force and fear oppose the laws of nature; which desire that each person act freely, so that a firm obligation arises; and the blessed Thomas takes away the power from even the parents to obligate their daughter to marry a specific person. 1 Sánchez, on marriage, I. 4, diss. 3, n. 4 writes: "When it is said that fear falls upon a steadfast man, it is understood that by the name of the man, the strength of his mind is meant, for which condition applies." Indeed, the nature of force or the cause of fear, can be absolutely or relatively formidable. Therefore, fear is proven either by showing that the nature of coercion is grave, or that it has produced grave effects, according to the different conditions of people." The defender of the marriage has demonstrated with great force the notoriety of this impediment, if it existed, to be such that the presence of the parish priest and witnesses would be necessary to validate the marriage in question. Thus, prolonged cohabitation and carnal intercourse, which already existed between the spouses, would suffice for validation. However, the Holy Congregation for the invalidity of marriage seems to have held the opposite opinion in the first and second instances, because several witnesses testified that the force and fear were clearly present even at the time of the marriage celebration. Therefore, because of the notoriety of the impediment, the marriage could not be validated, except through the ceremonies of Trent, according to the

Translated by churchlatin.ai, a product of Boyne Archives

current discipline of the Church.

[*Latin ed. p. 350*]

350. On Marriage, VII. When a man is in a state of freedom, he cannot be compelled by his parents through force to enter into such a marriage, which is a kind of perpetual servitude; but according to the rule of law, it is not believed that one wills what he obeys the command of his father or master to do. From the DECREE of the Congregation of Bishops and Regular Canons concerning the administration of ecclesiastical goods and burials. Dated April 5th and August 30th, 1878. Summary of the case. On the island of M., the civil law prohibits burying the bodies of the dead within churches, within the city walls; but it is permitted to do so only in churches built outside the walls, provided that the rectors of these churches give assurance to the civil authorities that the burial will take place there. On May 15th, 1874, Michael A. died; and his parents, while arranging for the funeral to be held in the collegiate and parish church, also wished that the body be carried and buried in the church of the Capuchins, located outside the city, where they hoped the family of Michael would be present for the burial. The pastor of the collegiate church opposed this, saying that the right of burial in the Capuchin church was not clear; and unless the Guardian Father could prove it with more convincing arguments, he would not permit the body of Michael to be carried there and buried. The Guardian Father, not heeding the opposition, nor demonstrating the right of burial more clearly, and since the civil authority had granted him the requested permission to bury the body, on the morning of May 16th, he went to the house of the deceased; and wearing a surplice and stole, and also carrying a cross, he crossed the parish territory.

[*Latin ed. p. 351*]

Regarding the right to conduct the funeral and burial, 351. The body of the deceased, who died in the city of C., was placed in the church of the Capuchins. However, the Guardian explained, and proved with written documents, that the parish priest of the collegiate church had already arranged to have the funeral, and on the 16th, at the eighth hour of the morning, went to the deceased's house to be present while the body was carried to the church of the Capuchins. The deceased's son, Michael, also stated in writing that everything had already been arranged for the body of his father to be carried to the church of the Capuchins on May 16th; whereas the parish priest of the collegiate church postponed the funeral until the afternoon. This delay displeased the family of the deceased, and they called the Guardian of the Capuchins, so that the funeral could be carried out at the agreed time. The canons of the collegiate church and parish, believing that this action violated their rights, appealed against the Capuchins to the Sacred Congregation of Bishops and Regular Canons.

Translated by churchlatin.ai, a product of Boyne Archives

A summary of the arguments:

RIGHTS OF THE CANONS. The Bishop, in favor of these, stated that the burial in the church of the Capuchins was not a burial place for the ancestors of the deceased. In fact, from an instrument requested from a public notary on October 1, 1849, it is clear that this burial place was acquired by a certain Joseph Micallef for himself, his family, and all his successors, or as it is written on the tombstone, for himself, his wife, and his parents. However, the deceased was not connected to the family of the founder; and there was only a relationship of affinity between him and another branch of the same Micallef family. Therefore, the deceased could not, by any right, be buried in that burial place, which the founder had established for himself, his family, and his successors, because he was not of that family, nor a successor, nor a direct descendant. However, the words on the tombstone seem to suggest that even relatives should be included; for sometimes the term "parents" is also used to include relatives. But Fargna, in his commentary on the canons regarding inheritance, part 2, canon 1, resolves this difficulty.

[*Latin ed. p. 352*]

352 Regarding the laws governing funerals and burials, the voices of successors and parents in matters of legal guardianship, and especially concerning the rights of burial, demand a strict interpretation. In the same manner, if legal guardianship were reserved for parents and blood relatives, and the names of parents and relatives are mentioned, then all those who are connected by the bond of blood should be included, whether through the line of agnatic descent or through the line of cognatic descent, rather than through the line of the mother's kinship. Card. de Luca, *de iurepatron.*, disp. 28, n. 11; *Rota in Interamnen.*, *Iurispatron.*, March 22, 1706. Therefore, unless it is clearly established that the deceased and his parents have the right to burial in the Church of the Capuchins, and unless Michael A. has chosen his own burial place, the deceased should be buried in the parish church. Indeed, the Sacred Congregation, in a decree addressed to the Conventuals of January 1870, concerning the question: "Do parents and heirs have the right to freely choose the church for the funeral of their deceased relatives?" answered: "No." And in the matter of the funeral in Civitatis Castellanae, on January 28, 1764, the Sacred Congregation denied the parents of the deceased any freedom to choose the burial place, because it was presumed that the deceased had conformed to the established laws, and that, unless otherwise stipulated, he should be buried in the parish churches, unless he has a burial place of his ancestors. Therefore, the Bishop continued, if Michael A. could not be buried in the aforementioned burial place, then even the Guardian could not provide proof, to which the civil authority granted permission for the burial in the Church of the Capuchins; nor could he legally carry the body, nor associate it with a stole and a cross raised in the territory

Translated by churchlatin.ai, a product of Boyne Archives

of another parish. THE RIGHTS OF THE CAPUCHINS. The Fathers of the Order, following a different reasoning than that of the Bishop, sought to demonstrate, when examining the genealogy of the deceased, that he was the son of the founder's daughter-in-law. And therefore, just as the founder is the grandfather of the children who were born from his own son, united with the daughter of Michael A., so too is the deceased Michael the grandfather.

[*Latin ed. p. 353*]

Regarding the same sons, section 353 concerning the leading of the funeral and burial. Therefore, the Guardian could not in any way doubt the right that the deceased had, so that he could be safely buried in the tomb which Joseph Micallef had purchased for himself, his family, and for relatives of both: that is, of himself and his wife, and in which the aforementioned nephew had already been buried. And this all the more because in a certain ordinance of the year 1870 it was stated: "It is presumed that everyone has the right to be buried in a tomb... in which someone from their blood relatives has been buried by their own right." Nor did they consider that they had acted unjustly in carrying and associating the body, without the intervention of the parish priest; for the Regulars are lawfully able to do this whenever the parish priest has been invited by them, or has refused, or has not arrived at the appointed hour; S. C. Congregation in Tusculana funerum, July 24, 1734. Concerning the question: Whether, after the Reformed Fathers have waited for a certain period of time for the Archpriest, or his coadjutor, they can, without them, carry the body to their church: the answer was: Affirmative, provided that the Archpriest or Canon coadjutor has been previously notified and waited for for an hour. In this case, the Capuchins say, the parish priest who was called refused, and did not arrive. Nor was it incumbent upon the Guardian to prove, with clearer arguments, the right that the deceased had in the aforementioned tomb; only the deceased's family is compelled to demonstrate their claimed right and to dispel any doubt concerning its actual existence. The Guardian could do nothing other than hear the family of the deceased, who asserted their right in the tomb; while it was also known that this family was related to the founder's family, and that the aforementioned deceased nephew had been buried in the same tomb. If the Father Guardian acted properly in this funeral, by walking with a stole and a cross; because he could do all these things, even if the parish priest were present at the association. It pertains to the church performing the burial to have the right to raise the cross and to perform the sacred functions; the presence of the parish priest alone is required; Reiffenstuel, book 3, title 28, no. 36, ibid. While carrying...

[*Latin ed. p. 354*]

Regarding the laws concerning the funeral and burial: 354. The body

Translated by churchlatin.ai, a product of Boyne Archives

is carried to the tomb, but the parochial cross is not carried to the church where the burial takes place, as Barbosa, in the cited work, number 78, states, citing two decrees of the Holy Congregation. However, the parish priest may also accompany the funeral procession up to the church of the Regulars, and may even enter it, but in no way should he interfere with the act of burial, nor perform the offices for the deceased, nor publicly recite prayers or psalms, since all of these things must be done by the brethren themselves. After these and other considerations were presented on both sides, the following two questions were proposed to clarify the matter. I. Whether and in what way a gentile family has a right to burial in the church of the Holy Liberator (of the Capuchins) in this case. II. Whether the Guardian of the Fathers Capuchins of the Holy Liberator violated the rights of the parochial clergy in this case. In the matter discussed by the Sacred Congregation for Extraordinary Affairs and Religious Affairs, on April 5th, the response was: "Deferred." And on August 30th, 1878, it was decided: Regarding I: Negatively. Regarding II: In our opinion, it is so; write to the Bishop to impose silence, and advise the Religious to act with more caution. RESOLUTION. FROM WHICH WE UNDERSTAND: I. The terms "successors" and "parents," especially concerning burial rights, must be strictly understood; so that only those who are connected by blood, whether by consanguinity or affinity, should be included under these terms, and not affines. II. The deceased could not, by any right, be buried in the Capuchin burial ground, which Micallef had established for himself, for his family, and for his successors, because he was neither a member of the family, nor a descendant, nor a relative. III. A deceased person, if lacking a burial place among his ancestors, or if he has not designated a sacred burial place for himself, must be buried.

[*Latin ed. p. 355*]

Regarding the rights concerning the funeral and burial: 355 In the parish cemetery; for it is presumed that [the deceased] has arranged [his burial] according to the order of law, unless otherwise stipulated before death. IV. Neither parents nor heirs of the deceased have the right, by their own judgment, to choose the burial place for the deceased. V. The association of the body until the place of burial is to be included among the parochial rights; therefore, the association must regularly be performed by the parish priest in whose parish the person died and in which he received the sacraments. VI. Therefore, it was an injustice for the Reverend Fathers Capuchin to have performed the association of the body for burial, even if the place of burial for that deceased person was actually in the church of those same Fathers, because the association of the body is included among the parochial rights. FROM THE HOLY CONGREGATION OF INDULGENCES, CONGREGATION OF THE MOST PRECIOUS BLOOD. Concerning the faculty of the Capitular Vicar regarding the erection of confraternities. On November 15,

Translated by churchlatin.ai, a product of Boyne Archives

1878. Whereas, in Aurelian, on August 1, 1868, this Holy Congregation, having been entrusted with matters of indulgences and sacred relics, declared that General Vicars have the power to erect confraternities, to approve their statutes, and to grant testimonial letters for their aggregation, according to the Constitution of Clement VIII, which begins: "Quaecumque a Sede Apostolica haud pollere potestate ordinaria, sed specialis indigere delegationis" [Whatever the Apostolic See cannot accomplish by ordinary power, but requires a special delegation]; and whereas, even the recalled Capitular Vicars were in doubt regarding these faculties, therefore, a DECREE.

[*Latin ed. p. 356*]

The Most Holy Congregation of the Precious Blood received certain petitions from the Royal Congregation of the Precious Blood, requesting that this Sacred Congregation deign to resolve the following doubts.

I. Whether a Vicar Capitular can establish confraternities, so that the establishment thus completed would be canonically valid?

II. Whether a Vicar Capitular can validly grant testimonial letters, and the consent required by Clement VIII for the aggregation of confraternities?

III. Whether a Vicar Capitular can approve the statutes of confraternities.

In the General Congregation held in the Apostolic Palace at Vatican on November 15, 1878, the Most Reverend Fathers responded: Regarding I, II, and III: The Vicar Capitular should abstain.

Having reported all of these matters to His Most Holy Paternity, Pope Leo XIII, in an audience on November 23, 1878, the Secretariat of this Sacred Congregation, as undersigned by Me, the Secretary, His Holiness benignly approved the resolution of the Sacred Congregation.

Given at Rome, from the Secretariat of the aforementioned Sacred Congregation, on the day and year as above.

A. Card. OREGLIA

From S. STEPHANO, Prefect.

A. Panici, Secretary.

Synopsis of Discussion. In the course of the official examination of the proposed doubts, it was noted that there is no settled opinion as to whether a Vicar Capitular can perform all those things for which a General Vicar requires a special mandate. Indeed, many doctors are cited both in favor and against this proposition; and it is added that the opinion of those who deny this has been affirmed on several occasions by the Sacred Roman Rota and by the Sacred Congregation of the Council.

NOTES FROM THE OFFICIAL RECORD.

I. See Benedict XIV, *De Synod. Dioec.*, book 2, chapter 9, number 4.

Translated by churchlatin.ai, a product of Boyne Archives

Ferraris, *V.*, Vicar Capitular, article 2, number 40.

[*Latin ed. p. 357*]

Congregation of the Most Precious Blood 357. Even if the entire jurisdiction is transferred to the Capitular Vicar when the Chapter holds office, a doubt might arise as to whether the power in question is transferred to the Chapter and, through it, to the Capitular Vicar. Barbosa states as a general rule that, when the Chapter holds office, it can exercise "all power, administration, and ordinary Episcopal jurisdiction," except in cases "which are expressly prohibited by law, or which, for some reason, are considered as expressly prohibited." However, it must be remembered that this rule, followed by many doctors, is subject to the limitation that, whenever the exercise of this jurisdiction can conveniently be postponed without prejudice or danger until the future successor of the Bishop, it seems that the Capitular Vicar should refrain from exercising it. This limitation is particularly applicable when dealing with matters of great importance, or when introducing something new into the Diocese; for in this case, it can be considered, in a certain sense, as expressly prohibited by law under the general sanction: "Nothing shall be innovated during a vacancy." In addition, we must add what Emus Ledochowski observed in his report and vote regarding certain petitions submitted to the Holy Congregation of Indulgences by some Dioceses of Germany. These petitions concerned dispensations from the conditions required for the erection of confraternities, as established by the Constitution of Clement VIII and by the decrees of Pius IX, due to the most grievous circumstances in which the Catholic Religion is found there. The esteemed Emus stated that he would not give advice in favor of granting such dispensations, because the erection of new sodalities, whose moral and religious purpose is clear, is a matter of the greatest importance in the Dioceses; and the intervention of the Bishop cannot easily be postponed. Therefore, in case 1, see Volume VIII, page 277 and following, where excerpts from the Bull of Clement VIII concerning confraternities have been cited. The decrees of Pius IX indicate, among other things, that confraternities can be established in any place, provided that the Local Ordinaries consent.

[*Latin ed. p. 358*]

358 The Congregation of the Most Precious Blood should be subject to the principle of common law: *sede vacante, nihil innovandum* (when the See is vacant, nothing new should be introduced). OPINION OF THE CONSULTOR. Benedict XIV, *De Synodo. Dioec.*, book 2, chapter p, paragraph 4, writing about the opinion of Doctors who hold that a Capitular Vicar, by the sole commission of his office, is able to carry out certain matters, for which the Bishop's General Vicar requires a special mandate, says: "Indeed, the Tridentinum (say the Doctors who hold the aforementioned

Translated by churchlatin.ai, a product of Boyne Archives

opinion) wished that a Vicar be chosen by the Chapter, in order to avoid discord among the Chapter members, to expedite matters more quickly, and to prevent many inconveniences that experience teaches would arise, if the actual administration of the episcopal jurisdiction were to reside with the entire Chapter. However, these inconveniences would not be less if, even after a Capitular Vicar has been appointed, the Chapter still reserved to itself, according to its own judgment, those matters which otherwise require a special mandate." From these words, it appears, says the Consultor, that Benedict XIV did not definitively accept the opinion of those who believed that the Capitular Vicar did not have jurisdiction in those matters for which the Bishop's General Vicar requires a special mandate; but rather, he presented stronger reasons for the contrary opinion. Moreover, it is also evident that the same Doctors who opposed the opinion regarding the Capitular Vicar, established it, because they believed that the Chapter was not obligated to demand the entire administration of the episcopal jurisdiction from the Capitular Vicar, but could reserve a portion of that administration for itself. Especially with regard to those matters that require a special mandate from the Bishop's General Vicar, they supported their opinion with certain Resolutions of the Sacred Congregation and the Roman Rota. However, it should not be omitted that the Sacred Congregation, after mature deliberation, abandoned the aforementioned resolutions, as demonstrated by Rigantius, *ad regulas Cancellariae Apostolicae*, rule 24, § 3, paragraph 22 and following, and by Bouix, *De Capitulis*, Part 3, Section i, Chapter p: "The Congregation of the Council, which, according to Fagnano, has undergone very few changes, has varied in this matter."

[*Latin ed. p. 359*]

Congregationis Pretiosissimi Sanguinis 359 « as if following the varied opinions of Doctors of that time. For it had been held that the jurisdiction granted by the Chapter could be restricted to the Vicarius Capitulari in the years 1632 and 1651, and that he possessed a corresponding mandate; as is evident from the aforementioned decision of this Tribunal (in Maurianensi, July 25, 1626). Afterwards, however, from at least the year 1736, opposing opinions arose, and the matter remained in suspense. From these, it becomes clear that the opinion of those who believed that the Vicarius Capitulari could not exercise those things which require a special mandate in the Vicarius Generalis of the Bishop was unfounded, and that a contrary and certain opinion must be maintained. The Consultor added, ex officio, that they were subsumed; and even if, when the see is vacant, the entire jurisdiction is transferred to the Chapter, and from the Chapter to the Vicarius Capitulari, it could still be doubted whether the jurisdiction of the Bishop is transferred to the Chapter, with regard to those things about which we are now inquiring; because, according to Barbosa and the opinion of other Doctors, not all jurisdiction is transferred to the Chapter,

Translated by churchlatin.ai, a product of Boyne Archives

but only that which is necessary, and not that which is voluntary. This objection seems to raise the old controversy that was once debated among the Doctors, namely, whether the Episcopal jurisdiction, whether voluntary and granted by the Chapter, or whether only that which is necessary, is transferred to the Chapter, and from the Chapter to the Vicarius Capitulari. Regarding this controversy, Bouix, loc. cit., Sect. 2, cap. 3, writes that all Doctors agree that the necessary jurisdiction is transferred to the Chapter, and from the Chapter to the Vicarius Capitulari. With regard to the voluntary or gracious jurisdiction, he recounts three opinions. « Others, with « Suaresio, hold that, even with regard to that jurisdiction, the aforementioned rule is to be admitted, namely, that the Chapter succeeds, except for those things which are found to be excepted by common law... « However, the first opinion, which Reiffenstuel, tit. Ne sede, n. 23, considers to be the most solid, seems to be based solely on reason. « For it is commonly admitted as a general rule that « the Chapter succeeds to the Episcopal jurisdiction, because the texts of the law « compel this; but these texts do not distinguish between « necessary and voluntary jurisdiction, but generally.

[*Latin ed. p. 360*]

The Congregation of the Most Precious Blood, paragraph 360, states that "the ordinary jurisdiction of the Bishop passes to the Chapter when the See is vacant." Therefore, it is falsely asserted that a necessary jurisdiction is regularly transferred to the Chapter, and not a voluntary one. However, in order that the jurisdiction of the Capitular Vicar may not be restricted beyond the limits expressly established by law, and using the argument contained in the title "lest anything be innovated when the See is vacant," a certain consulter argued: that which is not prohibited is understood to be permitted, provided that these things are not reserved by law itself; but this (the erection of confraternities by the Capitular Vicar) is not prohibited, nor specifically reserved, therefore it is understood to be permitted. FROM WHICH WE GATHER: I. Whether the Capitular Vicar possesses the faculty of lawfully erecting pious sodalities, of aggregating them, and of approving their statutes; although no one doubts that he possesses the general vicariate: since the one acts at the will of the Bishop, the other cannot be revoked by the Chapter, and the ordinary power of the Bishop can be obtained. II. The Sacred Congregation of Indulgences, in a variety of opinions, did not wish, by its own judgment, to define whether it was within the power of the Capitular Vicar, as if he were a Bishop, to carry out those things which concern the erection of confraternities, their aggregation, and the approval of their statutes. III. Nevertheless, with prudent counsel, it decreed that Capitular Vicars should abstain from carrying out these things; because, it seems to us, the erection of confraternities is a matter of the greatest importance in the governance of the diocese, which, however, can easily

Translated by churchlatin.ai, a product of Boyne Archives

be postponed until the future successor of the Bishop.

[*Latin ed. p. 361*]

Freiburg. 361 FREIBURG. Concerning the interpretation of the words below, within one or two weeks. November 15, 1878. DECREE. Lotharius Kubel, Bishop of Leuca and Capitular Vicar of the Archdiocese of Freiburg, on January 14, 1877, having requested from this Holy Congregation, which presides over Indulgences and sacred Relics, that, due to the scarcity of priests there, confession made twice in the month, observing the prescribed conditions, might contribute to obtaining the Indulgences within the aforementioned time, as other Dioceses enjoy such a concession by Apostolic Indult, a concession was granted, but in the manner and form customary, namely, by writing: "Most Holy Father, heeding our prayers, benignly grants the requested Indult, so that the Priests and other faithful of the Archdiocese of Freiburg who are accustomed to making sacramental confession within one or two weeks of each month, may all and each obtain all plenary Indulgences granted during that time interval, without sacramental confession, provided that, etc." However, the aforementioned Bishop, doubting whether the word "week" should be understood as meaning seven days or rather eight days, and whether the words "within two weeks" should be understood as meaning that two confessions within the month are sufficient, or rather that a confession must be made every fourteen days, humbly petitioned the Holy Congregation to deign to resolve these doubts. I. Whether the confession prescribed for each week must be made within seven days or rather within eight days? II. Whether the words "within two weeks" are to be interpreted strictly, so that a confession must be made within fourteen days, or rather is it sufficient to have two confessions in the month?

[*Latin ed. p. 362*]

Friburg. 362 In the General Congregation held in the Apostolic Palace at the Vatican on November 15, 1878, the Most Reverend Fathers decreed: Regarding I. Affirmative to the first part, that is, that the prescribed confession must be made at intervals of seven days. Negative to the second part. Regarding II. Affirmative to the first part, that is, that the prescribed confession must be made at intervals of fourteen days. Negative to the second part. And having reported all of these matters to His Holiness, Pope Leo XIII, in an audience on November 23, 1878, His Holiness graciously approved the resolution of the Sacred Congregation. Given in Rome, from the Secretariat of the aforementioned Sacred Congregation, on the day and year as above. AL. Card. OREGLIA, Prefect of S. Stefano. A. Panici, Secretary. Synopsis of the discussion. It has been observed that this is stated by the Reverend Father M. Ulrtch in the work entitled *Tesoro spirituale*, part I, chapter 4, article 2, number 2. The following distinctions must be made regarding con-

Translated by churchlatin.ai, a product of Boyne Archives

fession, which can and should be made (in order to obtain indulgences): 1. The faithful in general. 2. Those who are accustomed to confessing once a week. 3. Those who, although lacking this custom, reside in places where there is a scarcity of confessors. 1. All the Christian faithful (according to the decree of the Sacred Congregation of Indulgences of March 31, 1759, reaffirmed by Clement XIII on December 10, 1761) can confess, in order to gain indulgences, both on a feast day and on the eve of that day. 2. Others who are accustomed to confessing once a week gain all indulgences, without an actual confession, provided that they have not lapsed since their last confession (according to the decree of the same Congregation of December 9, 1763).

[*Latin ed. p. 363*]

Friburg. 363 3. To the faithful of places where there is a scarcity of confessors, those who make their confession within the week preceding the feast day, obtain the indulgences attached to that feast day. OPINION OF THE CONSULTOR. After the question proposed by the Prelate had been presented, and considering that the meaning of the rescript seemed obscure and difficult, and also because he did not entirely agree with the petition presented, and because it was not entirely clear whether the required confession must be made within seven days, according to the proper meaning of the word "week," or rather, whether it is permissible to make it within eight days, as some decrees of the Holy Order seem to indicate, it seemed advisable that grave theologians should agree on the meaning of "week" in this matter. Therefore, as someone noted, the expression "once a week" should be carefully considered, because it does not mean "every eight days"; and therefore, according to the words of the decree, one could confess his sins on the second Monday of a week, and then confess again on the Saturday of the following week, which would be the thirteenth day after his last confession. And it cannot be doubted that this person has confessed each week, which is sufficient. Therefore, someone considered that, in matters of indulgences, one should adhere to the proper and literal meaning of the words; from which it follows that the words "each week" mean the same thing as "within seven days." It was also believed that some responses of the Holy Congregation of Indulgences do not prevent the period of "week" from being understood as a full period of eight days, or as being declared to be so. Thus, in Meclinen, the following is the tenor: The public professor of Holy Canon Law at the Catholic University of Louvain, in the Diocese of Meclinen, appeals to the Holy Congregation for a decision on the following doubts. First doubt: "By a decree of the Holy Congregation of Indulgences, dated June 12, 1822, it is granted that a sacramental confession made within the week before the feast day may contribute to obtaining the indulgence: I ask, whether the words 'within the week' mean only eight

Translated by churchlatin.ai, a product of Boyne Archives

days immediately preceding the feast day, or whether they mean..."

[*Latin ed. p. 364*]

364 Friburg. Madam, does the entire and complete period preceding the feast day, for example, if Confession is made on a Sunday, contribute to obtaining the indulgence on the Sabbath of the following week, on which day the feast occurs, even though thirteen days may have elapsed between the Confession and the feast day? II. If Confession is made eight days before the feast day, does this Confession contribute only to obtaining one Indulgence, or can this Confession also obtain other Indulgences that may occur within that period, for which sacramental Confession would otherwise be required? The Sacred Congregation responded: Regarding the first question, affirmatively concerning the first part, and negatively concerning the second part. Regarding the second question: Negatively concerning the first part, and affirmatively concerning the second part. Following a decree issued by the order of the Supreme Pontiff Pius VII, the Consultor requested an interpretation, the Lovaniensis Professor, having in mind both the aforementioned decree of Clement XIII of December 8, 1763, by which to the faithful who confess at least once during the week, all Indulgences are granted, for which obtaining them requires actual Confession; and also the established rule, as mentioned above, of taking the week as a unit. He therefore inquired whether the week preceding the feast day to which the Indulgence is attached, also signified a unit, or rather, whether it preferred a specific number of days; and therefore, whether, according to the decree of Pius VII, the same concession would include, just as that of Clement XIII does, all other Indulgences occurring during that week, along with the condition of Confession during that week, whether these Indulgences are attached to a feast day or not. First, the Sacred Congregation denied this; if the reason for not counting individual days can hold in one case, in which a series of subsequent weeks is involved, it cannot be understood in another case, in which the matter concerns only one week, within whose scope and no further, the condition.

[*Latin ed. p. 365*]

Freiburg. Three hundred and sixty-five sacramental confessions must be completed. Another asserted; because the concession, according to the form of the decree of Pius VII of June 12, 1822, is nothing more than a communication and extension of the aforementioned Indult of Clement XIII, while the decree of December 9, 1763, remains firm for those faithful who approach Confession at least once a week, and for other faithful in places where, due to a lack of confessors, they cannot frequently receive the Sacrament of Confession, let the aforementioned decree be communicated to them and, with the consent of the Most Holy [Father], be extended to all the faithful of both sexes, so that Confession, once completed within

Translated by churchlatin.ai, a product of Boyne Archives

the week before the feast day, may contribute to obtaining the Indulgence. Therefore, rightly relying on the force of this decree of Pius VII, the Holy Congregation judged that the faculty of obtaining even other Indulgences had been extended, with the obligation of completing the sacramental confession within the designated week. Having considered these resolutions, the Consultor said: "The Archbishop of Freiburg rightly doubted whether the words 'within the week,' which relate to the decree of Pius VII, should be understood in the same sense as 'eight days' in the decree of Clement XIII, and therefore whether the Confession prescribed to be performed each week could be valid within eight days." The matter can be explained in detail with attention and distinction. And first, both resolutions of the Holy Congregation in Mechlin do not concern the words 'eight days' or 'the eighth day,' but refer to something else. These expressions are taken from a petition presented by the Advocate of Louvain, as they appear in it, and are not entirely consistent with each other. The first speaks of 'eight days' which immediately precede the feast day, from which they emerged, together with the feast day, forming a complete period of nine days. The second extends up to the eighth day before the feast day, and therefore, already, nine days are no longer counted, but eight days are considered for the week. Therefore, should not such formulas be all the more disregarded, and only the solutions to the questions proposed in the entire decree be considered?

[*Latin ed. p. 366*]

366 Freiburg. However, those words, since they are not explicitly proven, were somewhat admitted in the decree, serving as if to indicate the same thing as an octave, namely eight days. Indeed, it is rightly said that one confesses within the octave before the feast who performs it within eight days: for, calculating the seven days that precede, and adding the very day of the feast, there results a total of eight days which truly and properly elapse, usefully for the purpose of expiation, for the conscience; however, the first of these days, consistently with the Mechlin decree, will be the eighth day before the feast. Nor is it otherwise in another case: speaking, indeed, of Confession at least once within the week, according to the decree of December 9, 1763, one is rightly said to satisfy this condition who confesses, at the very least, on the eighth day after another confession has been made. However, it cannot be argued from this in either case that eight days can be granted for the week, instead of seven. Rather, from the fact that it is certain that the week consists of seven days, the necessity arises of calculating the days in the aforementioned manner, which separate one confession from another, or a confession from the feast day; that is, of calculating the days in one case from the eighth day after another Confession, in order that it be true that it is made within any week; in the other case, from the eighth day before the feast, in order that it be true that the Confession is

Translated by churchlatin.ai, a product of Boyne Archives

made within the week preceding it. Since, therefore, different things are the number of days that comprise the week, and the number of days that are counted, either from one Confession to another, or from a Confession to the feast day; since, moreover, the words of the Mechlin decree refer only to the second case, which, furthermore, presuppose that the week, by itself, consists of the number of seven days; it remains that, with regard to the first case, a solution must be given to the Prelate of Freiburg, which is indeed not ambiguous. He asks whether a Confession, required by the decree of Clement XIII to be made at least once within the week, must be performed within seven, or rather within eight days, or whether it can be performed on any day of a seven-day period or an eight-day period. Having brought the matter to the number of days to which the week is related, it is certainly permissible to consider only seven days for the same. And plainly...

[*Latin ed. p. 367*]

Freiburg im Breisgau. 367. The nature of the matter and the rigorous demands of order, which must be observed especially in this specific case, require that the computation of the week begin on the first day and conclude with the last day, which is the seventh day; the eighth day, then, shall be the beginning of the following week. If eight days were to be counted, by what means, by adding one day each week, would one arrive at the path to obtaining Indulgences, which is so clearly and strictly defined? Therefore, considering these things, and based on the opinion of the Reverend Consultors, who wrote in the preceding proposition regarding this matter, unless it seems otherwise to the Most Eminent Fathers, I do not believe it is necessary to depart from this. Furthermore, since, according to what has been presented, the number of eight days is rightly established, from which, as I believe, confusion and doubt arose, proposed by the Orator from Freiburg im Breisgau; in order to prevent further confusion, and so that it may not appear obscure what is affirmed and what is denied, and to avoid the danger of erroneous interpretation, I believe it would be useful to restrict the meaning of the response to the first question in this manner: "Affirmatively to the first part, Negatively to the second part; that is, Confession is to be performed in the case under consideration at any interval of seven days."

THEREFORE, THE FOLLOWING MAY BE GATHERED:

I. In matters concerning Indulgences, one must adhere to the proper and literal meaning of the words; thus, the words, considered week by week, signify nothing other than within seven days.

II. It is fitting for grave theologians to agree that, with regard to the matter of Indulgences, the week should be understood as a certain unit of time to be considered.

Translated by churchlatin.ai, a product of Boyne Archives

III. All doubt, which arose from other resolutions, has been removed by the response given on this topic, with clear and explicit words; by which it is established with certainty that, for the week, nothing other than a space of seven days is to be understood.

IV. Therefore, if, in order to gain a particular Indulgence, Confession is prescribed for each week, the faithful are obligated to confess at any interval of seven days, and no longer.

[*Latin ed. p. 368*]

368 Friburg. V. Similarly, whenever it is imposed that confession be made for the sake of gaining indulgences, within two weeks, it is not sufficient to satisfy the prescription with two confessions in the month, but it is required that the Christian faithful perform confession at intervals of no more than fourteen days. VI. All Christian faithful who are accustomed to confessing at least once a week can gain all applicable indulgences, and for those for which an actual confession is required. DECREE. It is forbidden to buy or sell sacred relics and the remains of the saints, both in the city and outside of it. For the holy bodies of the martyrs and of others who live with Christ, which were living members of Christ and the temple of the Holy Spirit, ought to be venerated by the faithful; for through them many benefits are conferred upon men by God; that their veneration may be promoted and that all base gain may be eliminated, ecclesiastical and civil laws have been enacted. Indeed, in chapter 3 of the Code of Canon Law concerning Sacred Churches, it was decreed: "Let no one profane the martyrs, let no one trade in them." However, in recent years, due to circumstances and the times, abuses have arisen, so that enemies of the Catholic faith and those greedy for base gain do not hesitate to sell sacred relics, which are highly sought after and of proven authenticity, especially in Rome, to the great scandal of the faithful and particularly of visitors. When this was made known to the Most Holy Lord Pope Leo XIII, the same Holiness, wishing to address this evil, and at the same time to strive to recover the sacred relics as much as possible, adhering to the statutes of the sacred canons, strictly commanded that Christian faithful, under no pretext, even for the purpose of redemption, be permitted to possess sacred relics and the remains of the saints, even in capsules.

[*Latin ed. p. 369*]

Decree 369: It is presumed that [certain individuals] dare to buy or sell hidden and sealed [items], both in the City [of Rome] and outside of it. Furthermore, it was commanded that whoever finds Sacred Relics that are for sale, should inform the Local Ordinaries, so that they may suitably provide [for them]. For this reason, the Most Holy Lord Our Pope ordered that this Decree be made and published. Given in Rome, from the Secretariat of the Sacred Congregation for Indulgences and Sacred Relics, on the 21st

Translated by churchlatin.ai, a product of Boyne Archives

of December, 1878. A. Card. OREGLIA, Prefect of S. Stephano. A. Panici, Secretary.

FROM THE SACRED CONGREGATION FOR RITES: DECREE. By which it is ordered that the writings pertaining to the Canonization of the Saints must only be printed by a printer who is properly dependent on the office and authority of the Father of the Apostolic Palace. The Sacred Congregation for the Causes of Beatification of the Servants of God and the Canonization of the Blesseds, considering the great importance of the matters presented to its examination, has deemed it necessary to issue this warning, in order to prevent the dangers that, in these troubled times, could easily arise from the imprudent publication of the accounts and judicial investigations concerning the same Servants of God. Therefore, after careful consideration of the Decrees of His Holiness, Pope Alexander VII, on the 7th and 23rd of July, of the year 1661, it was decided that, by a firm law, no such writings should be printed anywhere outside the City [of Rome], while the aforementioned Acts are in force, in volume XI, page CXXVIII, number 24.

[*Latin ed. p. 370*]

Decree 370 concerning the conditions of public affairs, or until otherwise provided by the Apostolic See, these [writings] may only be printed by printers who are properly dependent on and authorized by the office and authority of the Most Holy Father, Master of the Apostolic Palace, and who have been approved by him. If anything contrary to the aforementioned is published, it must be considered entirely invalid and of no effect by the officials of the Holy Congregation. And thus it was declared and decreed. On January 30, 1878. The aforementioned matters were faithfully reported to the Most Holy Lord Pope Leo XIII by me, the undersigned Secretary, and the Most Holy Lord approved the aforementioned Decree of the Holy Roman Church, and ordered that it be observed henceforth. Notwithstanding any contrary provisions. On March 7 of the same year. Fr. T. MARIA Cardinal MARTINELLI, of the Holy Roman Church, Prefect. L. $ S. ALTONEN. It is resolved that the feast of the patron of any church, whether consecrated or only blessed, should be celebrated with a double Class I rank, with an octave concerning the Mass and Office celebrated by the priests attached to that church. The Most Reverend Peter Joseph Baltes, Bishop of Alton, in the United States of America, presented to the Congregation of Sacred Rites, among the Decrees of the (plenary) Council of Baltimore, under number 384, the following: "We decree that henceforth the feast day of the patron of each consecrated church should be solemnly and duly celebrated. This can so easily be done in cities that, if neglected, there will be no excuse. The same must be done, even if the church has only been blessed. However, in the countryside and in towns, where it would

Translated by churchlatin.ai, a product of Boyne Archives

be difficult to gather the faithful for a week, it will be possible..."

[*Latin ed. p. 371*]

Decree 371: "The feast [quoad externam solemnitatem] shall be transferred to the nearest following Sunday." Since the aforementioned places are mission territories, proper parishes are generally absent, except for cathedrals and church buildings. The remaining churches generally have a missionary priest, who performs the services in these churches at the most suitable times possible. However, this does not occur in all churches; indeed, there are many that do not have a resident priest, and consequently, divine services are performed there in the best possible way, according to the circumstances. There are several priests who serve five churches. Some of these are large and beautiful, but the majority of them are such that they can scarcely be called churches. Furthermore, consecrated churches are very rare, and in this diocese, the number of consecrated churches amounts to four; the rest are blessed. Having explained these matters, the Reverend speaker humbly requested that the same Holy Congregation resolve the following two questions:

QUESTION I. Whether the feast of the patron saint of a consecrated church should be celebrated in these American missions as a feast of the first class, with an octave, both in terms of the Mass and in terms of the Office?

QUESTION II. Whether the feast of the patron of un-consecrated churches should be celebrated according to the norm of the aforementioned decree of the Council of Baltimore, as a double feast of the first class, with an octave, both in terms of the Mass and in terms of the Office?

The Holy Congregation, having carefully considered the matter, responded and decreed as follows: Affirmative to both, both in terms of the Mass, if it can be conveniently celebrated in those churches, and in terms of the Office, if there are clerics obligated to the canonical hours or, at the very least, if one of them is assigned to those same churches. And thus it responded and ordered that it be observed.

September 28, 1872.

C. Card. Episc. Ostien et Velitern., R. C. Praefectus.

PATRIZI, S. D. Bartölini, S. R. C. Secretarius.

[*Latin ed. p. 372*]

BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO XIII, POPE, AN ENCYCLICAL LETTER TO THE PATRIARCHS, PRIMATES, ARCHBISHOPS, AND BISHOPS OF THE ENTIRE CATHOLIC WORLD, GRANTING GRACE AND COMMUNION WITH THE APOSTOLIC SEE.

VENERABLE BROTHERS: GREETINGS AND APOSTOLIC

Translated by churchlatin.ai, a product of Boyne Archives

BENEDICTION.

From the very beginning of Our Pontificate, We have not neglected to indicate to you, Venerable Brothers, through encyclical letters, the deadly pestilence that creeps through the very depths of human society, leading it to the utmost ruin; and at the same time, We have demonstrated the most effective remedies by which it may be restored to salvation, and the gravest dangers that threaten it may be averted. But the evils which We deplored then have increased so greatly that We are compelled to address you again, as if the words of the Prophet sounded in Our ears: "Cry, cease not, lift up thy voice like a trumpet, and shew my people their wicked doings, and the house of Jacob their sins."

However, you understand, Venerable Brothers, that We are speaking of that sect of men who, under various and almost barbaric names such as Socialists, Communists, or Nihilists, are spread throughout the world, and who, bound together by an unholy alliance, no longer seek refuge in the darkness of secret meetings, but openly and boldly emerge into the light, having long since resolved to undermine the foundations of any civil society. For they are those who, as the divine words testify, defile the flesh, despise dominion, and blaspheme majesty. They leave nothing untouched or intact that has been wisely decreed by human and divine laws for the safety and dignity of life. They reject obedience to the higher powers, to whom, as the Apostle warns, every soul ought to be subject, and from which they derive their right to command; and they preach a perfect equality of all men in rights and duties. They dishonor the natural union of man and woman, a bond sacred among both civilized and barbarian peoples; and they weaken or even subject to lust the bond by which domestic society is principally held together.

[*Latin ed. p. 373*]

Encyclical Letter 373. – Driven by the allure of present goods, which is the root of all evils, and which some, desiring it, have strayed from the faith, they attack the natural law that sanctions the right of property; and through a monstrous deed, while seeming to consider the needs and desires of all men, they seek to seize and hold in common whatever has been acquired either by the title of legitimate inheritance, or by the labor of hands, or by the frugality of living. And these portents of opinion are proclaimed in their assemblies, they persuade through writings, they scatter a cloud of pamphlets among the common people. As a result, the venerable majesty of kings and the empire have suffered so much envy from this seditious people, that these nefarious traitors, unable to endure any restraint, have not once, but repeatedly within a short period of time, turned their weapons against the very princes of the kingdoms, with impious audacity. This audacity of treacherous men, which threatens ever more serious ruin to civil

Translated by churchlatin.ai, a product of Boyne Archives

society, and which agitates and distresses the minds of all, derives its cause and origin from those doctrines which, in former times, were spread among the peoples as if they were poisonous seeds, and which have produced such pestilent fruits in their time. Indeed, Venerable Brothers, you know very well the most grievous war that has been waged against the Catholic faith since the sixteenth century by the Innovators, and which has increased to the greatest extent to this day, aiming to open the way, after having overthrown all revelation and having subverted every supernatural order, not to the discoveries of reason, but rather to delusions. This error, which wrongly usurps the name of reason, since it naturally implants in man the desire for excellence, corrupts and sharpens it, and loosens the reins of all kinds of desires, and spontaneously pervades not only the minds of many men, but also civil society to a great extent. Hence, a certain new impiety, unheard of even among the pagans, has been introduced, and republics have been established, without any regard for God and the order established by Him: public authority is not said to derive its origin, its majesty, or its power to command from God, but rather from the multitude of the people; which, considering itself free from all divine sanction, is willing to be subject only to those laws which it itself has freely chosen. – Having attacked and rejected the supernatural truths of the faith, as if they were hostile to reason, the Author and Redeemer of the human race is gradually and little by little forced to be banished from universities, lyceums, and gymnasiums, and from all the customs of public human life. – Finally, the rewards and punishments of the future and eternal life are consigned to oblivion, and the ardent desire for happiness is confined within the limits of the present time. – With these doctrines spread far and wide, and with such license of thought and action granted everywhere, it is not surprising that men of the lowest condition, poor houses or workshops, learn to violate the homes and fortunes of the richer.

[*Latin ed. p. 374*]

Letter 374, Encyclical: It is not surprising that there is now no peace, either in public or private life, and that the human race is almost completely on the verge of ruin. However, the Supreme Pastors of the Church, to whom the duty of protecting the Lord's flock from the dangers of enemies is entrusted, have striven to avert the danger and to promote the salvation of the faithful. As soon as secret societies began to arise, within which the seeds of the errors we have mentioned were already being fostered, the Roman Pontiffs Clement XI and Benedict XIV did not fail to expose the wicked designs of these sects and to warn the faithful of the whole world about the hidden ruin that was being prepared. After those who boasted of being philosophers had attributed a certain freedom to man, and a new law, as they claimed, began to be devised and enacted against natural and divine law, Pope Paul VI immediately demonstrated the unjust nature and

Translated by churchlatin.ai, a product of Boyne Archives

falsehood of their doctrines in public documents; at the same time, with apostolic foresight, he foretold the ruin to which the deluded people would be dragged. But since no effective measures had been taken to prevent their wicked doctrines from being more and more instilled into the people, or from spreading in the public affairs of kingdoms, Pope Pius VI and Pope Leo XII excommunicated the secret sects, and again warned society about the danger that came from them. Finally, it is clear to all with what grave words and with what firmness of spirit and constancy our glorious Predecessor, Pope Pius IX, may he rest in peace, fought against the wicked machinations of sects, and specifically against the pestilence of Socialism, whether through his addresses or through encyclical letters given to the Bishops of the whole world. It is regrettable that those to whom the care of the common good is entrusted, surrounded by the deceptions and threatened by the menaces of impious men, have always been suspicious, or even unjust, towards the Church, not understanding that the efforts of the sects would be frustrated if the doctrine of the Catholic Church, and the authority of the Roman Pontiffs, were always duly honored by both rulers and people. For the Church of the living God, which is the "pillar and foundation of truth," transmits those doctrines and precepts by which the safety and tranquility of society are greatly promoted, and the roots of the wicked Socialism are uprooted. Although the Socialists themselves abuse the very Gospel, in order to more easily deceive the unwary, they are accustomed to distort it to suit their own views, yet there is such a difference between their wicked doctrines and the purest doctrine of Christ, that there can be no greater difference: "For what participation has justice with iniquity? or what communion has light with darkness?" They, as we have said, do not cease to dictate... 1 2: 1 Timothy, 3:15; 2 Corinthians, 6:14.

[*Latin ed. p. 375*]

It is the opinion of three hundred and seventy-five men that all are equal by nature, and therefore owe neither honor nor reverence to authority, nor obedience to laws, except perhaps those enacted by themselves according to their own will. On the contrary, according to Evangelical documents, the equality of men consists in the fact that all share the same nature, are called to the same most exalted dignity of sons of God, and that, with a common purpose assigned to all, each must be judged according to the same law, and will receive either punishment or reward according to merit. However, inequality in law and power originates from the Author of nature, from whom all fatherhood is named, both in heaven and on earth. Furthermore, according to Catholic doctrine and precepts, the minds of rulers and subjects are so intertwined with mutual duties and rights that the desire to rule is tempered, and obedience becomes easy, fitting, and most noble. Indeed, the Church constantly teaches the subject multitude the Apostolic precept: "For there is no power but from God: and those that

Translated by churchlatin.ai, a product of Boyne Archives

are in power, are ordained of God." Therefore, he who resists authority resists the ordinance of God; but those who resist will receive damnation to themselves. And again, it commands that subjects be obedient not only for the sake of wrath, but also for the sake of conscience; and that to everyone, tribute be rendered to whom tribute is due, custom to whom custom, fear to whom fear, honor to whom honor. For He who created and governs all has, with His provident wisdom, arranged that the lower should reach the middle, the middle the higher, and all should reach their respective ends. Just as, in the heavenly kingdom, choirs of Angels are distinguished from one another and subject to others; just as, in the Church, various orders and degrees of offices have been established, so that not all are Apostles, not all Doctors, not all Pastors; so also, in civil society, there are more orders, different in dignity, rights, and power; so that, just as the Church is one body encompassing many members, some more noble than others, but all necessary to one another and concerned for the common good. But so that rulers of nations may use the power granted to them for edification and not for destruction, the Church of Christ also reminds princes that the severity of the highest Judge looms over them; and, using the words of Divine Wisdom, she proclaims in the name of God: "Give ear, you that rule the people, and that please yourselves in multitudes of nations:" for power and authority have been given to you by the Lord, and strength by the Most High, who will examine your works and scrutinize your thoughts... For a severe judgment will befall those who rule... For God does not regard the person of anyone, nor does He fear anyone's greatness; for He made both the small and the great.

[*Latin ed. p. 376*]

Encyclical Letter 376, and it is equally concerned with all. But for the stronger, the more severe the trial. However, if it should ever happen that public authority is exercised by rulers in an unrestrained and excessive manner, the doctrine of the Catholic Church does not permit them to rise up against them with their own arms, lest the tranquility of order be further disturbed, and society suffer greater detriment. And when matters have come to such a point that no other hope of salvation appears, it teaches that Christian patience, through merits and fervent prayers offered to God, must be cultivated. - But if the decrees or commands of legislators and rulers should establish or order something that is contrary to divine or natural law, the dignity and duty of the Christian name, and the Apostolic judgment, urge that obedience must be given to God rather than to men. Furthermore, the Church's salutary influence, which contributes to the most orderly governance and preservation of civil society, is also necessarily felt and experienced by the domestic society, which is the foundation of every city and kingdom. You know, Venerable Brothers, that the true nature of this society, according to the necessity of natural law, begins with

Translated by churchlatin.ai, a product of Boyne Archives

the indissoluble union of man and woman, and is completed by mutual duties between parents and children, masters and servants, with offices and rights. You also know that through the tenets of Socialism, it is almost dissolved; indeed, if it loses the strength that is derived from the religious marriage, it is necessary that the power of the father over his children, and the duties of children towards their parents, be greatly relaxed. On the contrary, the honorable institution of marriage, * which God Himself instituted and decreed to be inseparable at the very beginning of the world, for the propagation and preservation of the human race, the Church teaches that it has become even more firm and holy through Christ, who willed to refer to it the dignity of the Sacrament and the form of its union with the Church. Therefore, as the Apostle warns, just as Christ is the head of the Church, so is the man the head of the woman; and just as the Church is subject to Christ, who embraces it with the purest and perpetual love, so too it is fitting that women should be subject to their husbands, and that they, in turn, should love them with faithful and constant affection. - Similarly, the Church regulates the relationship between country and parental authority, so that it may be able to uphold the duties of children and servants, but not to the point of excess. For, according to Catholic doctrine, the authority of the heavenly Father and Lord flows to parents and masters, and therefore it derives its origin and power not only from Him, but also necessarily borrows its nature and character from Him. Hence, the Apostle exhorts children to obey their parents in the Lord, and to honor their father and mother, which is the first commandment with a promise. And to parents, He commands: And you, 1 2 4 5 * Cap. VI. Act., V, 29. 3 Hebr., XIII. 4 Ad Eph., V. s Ad Eph., VI, 1, 2. 2

[*Latin ed. p. 377*]

Encyclical Letter 377: Fathers, do not provoke your children to anger, but bring them up in the discipline and instruction of the Lord. Furthermore, to servants and masters, the same divine Apostle proposes this precept: that servants should obey their earthly masters as they would Christ, serving with good will, as to the Lord; and that masters should not threaten them, knowing that their Master also is in heaven, and that there is no partiality with God.

Indeed, if all these things were diligently observed by each one to whom they pertain, every family would surely present a certain image of the heavenly home, and the excellent benefits derived therefrom would not be confined within the domestic walls alone, but would abundantly extend into the very republics. Moreover, Catholic wisdom, supported by the precepts of natural and divine law, most prudently provides for public and domestic tranquility, also through what it teaches and holds concerning the right of ownership and the distribution of goods necessary for life and well-being. For while Socialists present the right of property as a human invention,

Translated by churchlatin.ai, a product of Boyne Archives

repugnant to the natural equality of men, and advocating for the sharing of goods, they consider that poverty should be endured with a calm spirit, and that the possessions and rights of the wealthy can be violated with impunity; the Church, on the contrary, recognizes the inequality among men, naturally diverse in body and mind, even in the possession of goods, and commands that the right of property and ownership, derived from nature itself, be preserved inviolate for everyone. For it knows that theft and robbery have been prohibited by God, the author and defender of all law, so that it is not even permitted to look upon another's property, and that thieves and robbers, just like adulterers and idolaters, are excluded from the kingdom of heaven. Nevertheless, for this reason, the Church does not neglect the care of the poor, nor does the pious Mother fail to provide for their needs; rather, embracing them with a maternal affection, and knowing them to be the very person of Christ, who considers that any benefit conferred upon even the least of the poor is a benefit conferred upon Himself, she honors them greatly; she supports them with all the means at her disposal; she takes care to establish houses and shelters throughout the world to receive, nourish, and care for them, and she takes them under her protection. She urges the wealthy with a serious precept to give to the poor what remains, and she terrifies them with the divine judgment, by which, unless they help the needs of the poor, they will be punished with eternal torments. Finally, she greatly comforts and consoles the minds of the poor, either by presenting the example of Christ, who, though rich, became poor for our sakes; or by recalling the words of the same, in which He declared the poor blessed and commanded them to hope for the rewards of eternal blessedness.

Who then would not see that...

[*Latin ed. p. 378*]

378 Is this Encyclical letter the oldest method for composing harmony between the poor and the rich? For, as the very evidence of events demonstrates, if this method is rejected or postponed, it is necessary that one of two things occur: either the greatest part of the human race will relapse into the most shameful condition of slaves, which for a long time existed among the Gentiles; or human society will be agitated by continuous disturbances, robberies, and plundering, as we lament that it has happened even in recent times. Therefore, Venerable Brothers, We, to whom the governance of the entire Church has been entrusted, just as from the very beginnings of the Papacy We have shown the peoples and princes a haven in which they might safely find refuge; so now, moved by the extreme danger that exists, We again raise the Apostolic voice to them; and We earnestly implore them, again and again, to receive and heed the Church, which has so excellently earned merit for the prosperity of the public good, and to understand clearly that the reasons of the kingdom and of religion are so

Translated by churchlatin.ai, a product of Boyne Archives

closely connected, that as much as is taken away from one, so much is taken away from the duty of subjects and from the majesty of the empire. And since they have learned that the Church of Christ possesses such power to avert the pestilence of Socialism, a power that is not found in human laws, nor in the restraints of magistrates, nor in the arms of soldiers, let them restore the Church to that condition and freedom in which it may exercise its most salutary influence for the benefit of the entire human society. You, Venerable Brothers, who have perceived the origin and nature of the evils that are arising, devote all your strength and effort to this, so that the Catholic doctrine may be instilled into the minds of all and may penetrate deeply. Strive that from their tender years, all may be accustomed to embrace God with filial love, and to fear His divine power; to render obedience to the majesty of princes and laws; to moderate their desires, and to diligently observe the order that God has established, whether in civil society or in domestic society. Furthermore, it is necessary that the children of the Catholic Church dare neither to give a name, nor to favor in any way, that abominable sect: but rather, let them demonstrate by excellent deeds and by honest conduct in all things, how well and happily human society would exist, if each member shone with right actions and virtues. Finally, since the adherents of the Socialist sect are chiefly sought from among those who practice the arts or who work for wages, and those who are easily lured by the hope of wealth and the promise of goods through laborious work, it seems opportune to foster associations of artisans and workers, which, established under the protection of religion, make all members content with their lot and patient in their work, and encourage them to live a peaceful and tranquil life. May He inspire our endeavors and yours, Venerable Brothers, to whom we are compelled to refer the beginning and the outcome of all good things. But in the hope of present assistance, We, in these very days...

[*Latin ed. p. 379*]

Encyclical Letter 379 sets forth the reasons by which the anniversary of the Nativity of the Lord is celebrated. For Christ, being born, brought new salvation to a world already growing old and almost completely ruined by evil; and He commands us also to hope for this; and He promised that He would also give us the peace which then was announced to men by the Angels. For the arm of the Lord is not shortened that He cannot save, nor is His ear made deaf that He cannot hear. Therefore, on these most auspicious days, We, Venerable Brothers, and the faithful of your Churches, foretelling all good and joyful things, earnestly pray that the goodness and humanity of our Savior God may again appear to men, who, having been rescued from the power of the most heinous enemy, He has transferred to the most noble dignity of sons.

And that we may be more quickly and fully made partakers of these

Translated by churchlatin.ai, a product of Boyne Archives

blessings, add fervent prayers to God yourselves, Venerable Brothers; and invoke the patronage of the Blessed Virgin Mary, from her very Immaculate Conception, and of her Spouse Joseph, and of the blessed Apostles Peter and Paul, whose intercession we trust most of all. In the meantime, We impart, with the deepest affection of heart, Our Apostolic Blessing to you, Venerable Brothers, to your clergy, and to all the faithful throughout the world in the Lord. Given in Rome, at St. Peter's, on this 28th day of December, 1878. In the first year of Our Pontificate. LEO PP. XIII. FROM THE HOLY CONGREGATION FOR THE COUNCIL OF FUNERALS AND BURIALS. On July 20, 1878. Summary of Facts. Since the year 1869, a Sodality called "Of Mercy" was established in a town in Tuscany; whose principal function was to carry out works of charity and religion, especially concerning the dead.

[*Latin ed. p. 380*]

380 In discharging the duties of funerals and related matters, it was deemed necessary to encroach upon the parochial jurisdiction over time. And not only did the Sodalitas prohibit the parish priests from entering the deceased's dwelling with a raised Cross, to bless the body before it was removed from the house, but they were to wait before the doors of the parochial church; but also, after just compensation had been paid, together with their own chaplain, they carried the bodies of the deceased to the public cemetery, without the presence of the parish priest. In the year 1876, it happened that a certain wealthy parishioner of Saint Mary, Assumed into Heaven, died. After the customary family prayers were performed in the parochial church over the body, and since it was to be removed, at the will of the heirs, to the cemetery of the Archconfraternity of Mercy in the neighboring city, the aforementioned chaplain of the Sodalitas diligently endeavored to ensure that he, rather than the parish priest, would be chosen for this task. This indeed occurred, despite the protests of the parish priest; who, considering his rights to be violated by this manner of proceeding, and his jurisdiction to be undermined, appealed to the Congregation of the Holy Council, presenting various questions. The Bishop, as was customary, issued a judgment favorable to the parish priest. A concise summary of the discussion: THE RIGHTS OF THE CHAPLAINS OF THE SODALITY. This chaplain asserted that, by tacit consent of the parish priests, the Sodalitas, called the Brotherhood of Mercy, had, from the very beginning of its foundation, exercised the charitable work of bringing bodies to the church. Because the parish priests did nothing to protect their own rights, the chaplain argued, the parish priest is unjustly claiming a violation of rights, when it is well known that tacit consent is equivalent to expressed consent. Furthermore, he added that he had obtained the consent of the parish priest of the principal church of that town; who, in favor of the Confraternity, relinquished his right in funerals. As for the transportation

Translated by churchlatin.ai, a product of Boyne Archives

of bodies to the public cemetery, he maintained that he derived this right by custom, and sought to prove it with testimonies. He asserted that all Sodalitas, called the Brotherhood of Mercy, in Tuscany, enjoy this right.

[*Latin ed. p. 381*]

Concerning Funerals and Revenues 381: Everyone understands the significance of this matter; for Cardinal De Luca, speaking about the customs observed in neighboring places, in Discourse 41, paragraph 7, concerning feudal rights, states: "The customs of neighboring and adjacent places, as an interpretative custom, deserve careful consideration." He has gathered many testimonies from other chaplains of the same confraternities, called "Misericordia" in Tuscany, who have testified about the custom of associating the bodies with the cemetery by those same chaplains. From these testimonies, it has been determined that no injury has been caused to the parish priest, nor have his rights been violated; for the rule of law is: that no one suffers injury to whom no right has been violated. This custom is not invalidated because parochial rights are involved, in which no prescription is admitted. The Doctors of the Church teach that the association [of bodies] by way of transport is an indifferent act, which does not constitute the essence of the funeral, and in which the parish priest exercises no jurisdiction over the body, but rather the body is associated with others, as Barbosa demonstrates in *De Officio, de Potestate Parochiali*, chapter 5, paragraph 1. This is further strengthened by the rubrics of the Roman Ritual, which distinguishes between the association of bodies, which takes place from the house to the church, and that in which bodies are transferred from the church to the cemetery. Regarding the first association, the Ritual requires the presence of the parish priest... then the body is carried, and the parish priest, proceeding from the house, immediately intones... If mention is made of a different association, it is sufficient that any priest accompany the bodies. However, when the priest arrives at the tomb, if it has not been blessed, he blesses it. Therefore, according to the Roman Ritual, any priest, without needing any special delegation from the parish priest, has the right to carry the bodies from the church to the cemetery. Therefore, the parish priest is wrongly aggrieved when, through such an association, no rights have been violated. Likewise, it is inappropriate for the parish priest to demand the return of revenues; which that same chaplain obtained through the association carried out by force. It is known in law that only then should it be determined whether fruits or revenues are to be restored.

[*Latin ed. p. 382*]

382 Regarding funeral expenses and benefits, it is evident that bad faith was present in the handling of the benefits; this was lacking. To all of these must be added the fact that the aforementioned benefit was paid for labor and work. PAROCHIAL RIGHTS. On the contrary, it is clear, according to

Translated by churchlatin.ai, a product of Boyne Archives

the disposition of the sacred canons, that all acts of jurisdiction, whether performed in the house of the deceased, or on the road, or within the parochial church, belong to the parish priest, as has been repeatedly decided by the Sacred Congregation of Rites, especially in Aversa on September 5, 1640, and in Novare on September 21, 1681. Therefore, it is the duty of the parish priest to bless the body and to remove it from the house, to designate the routes by which the procession should proceed, and to direct it from beginning to end, to intone the antiphons and psalms, and to perform other similar actions until the burial of the body. *Barbo, de Paroch., cap. 26, n. 74; Lezzan., in sum. Regul., verb. Defunctus, n. 4; Panimol., decis. i, adnot. i, n. 7.* And just as it pertains to the parish priest to restore the living through the sacraments, so too it pertains to him to administer them to the dead, and to consign the dead to the earth. *Dudum de sepult.* For it is fitting that, according to the Apostle, the parish priests should be companions of consolation to those who have suffered, as the text expressly states in Chapter 1 on Burial. Therefore, having considered these things and the custom prevailing throughout the world, there should be no doubt about the right of the parish priest to conduct the body from the place of residence to the church and to the burial. However, it is futile for a chaplain to appeal to a tacit agreement among parish priests, which he believes can be equated with an express agreement, and to a renunciation of rights in funerals, granted by the principal parish priest of the aforementioned town, in favor of said confraternity. Indeed, with regard to tacit consent, the parish priest has observed that he has, by a certain moral force, up to now had to endure the violation of parochial rights. However, in law, the principle is established in *L. Filius, f. am. 8, ß. de Procur.*, that he who is silent and allows [something] does not seem to consent to those things which bring prejudice. Furthermore, a renunciation of rights in funerals is, firstly, denied by the Bishop, and secondly, it only obligates the one who renounces, and not others.

[*Latin ed. p. 383*]

Concerning the advantages and disadvantages, 383. Since these things are so, any argument that the Chaplain lacks value is refuted by the fact that it is derived from the relinquishment of parochial rights, either by abandonment or by the consent and abdication of the pastors. Furthermore, such a right cannot be presumed to be strengthened by custom, because custom, even if it has lasted for a hundred years, does not invalidate the rights of the pastors. *S. Cong. in Baren. Iur. paroch. 29 ian. 1821.* Moreover, it cannot be supported by custom that prevails in neighboring places; for it is the law of the place that must be considered regarding custom in a particular location. The rubric in the Roman Ritual always speaks of the Pastor, so that if someone is appointed a Priest, it is because the Pastor, if he is unwilling or unable to complete the funeral rites, must delegate someone to carry

Translated by churchlatin.ai, a product of Boyne Archives

out the function. Therefore, all legal basis is removed from the claim that the Chaplain lacks value, and that the transportation of the corpse of a wealthy parishioner to the cemetery of the neighboring city should have been carried out by the Pastor; because the transportation of the corpse for burial is considered as a continuation of the funeral rites, which have already been completed in the Church. *S. Congr. in Gamberinen. Elationis Cadaverum, Funerum et Sepulturae diei 8 iulii 1876*; and the funeral rites are only considered complete when the bodies have been found to have been placed in the tomb. *Monacell., in formul, legal, praetio, for. Eccles, append. post, decis. 15, n. 4; Passerin., de statu Horn, tom, 2 quaest, 187, art. 4, n. 491.* Given this, it undoubtedly seems that the restitution of the fees is required. For it is the constant practice of the Holy See to order the restitution of funeral fees whenever those fees have been unjustly received, even if there was good faith involved, as examples can be found in *Callien. seu Urbinaten. Iuris tumulandi 30 aug. 1817, ad 2 dubium.* With these observations made on both sides, the doubts proposed must be resolved. I. To whom does the right belong to associate the bodies with the Church and burial, even outside the Diocese, in this case?

[*Latin ed. p. 384*]

Concerning funeral expenses and emoluments, and whether the approval of the Parish Priest is required. II. Whether there is a place for the restitution of emoluments in this case?

RESOLUTION. The Sacred Congregation of Rites, having knowledge of the matter, on July 20, 1878, decided as follows:

I. Affirmative, with the approval of the Parish Priest, and furthermore.

II. Affirmative, and furthermore.

FROM WHICH WE GATHER:

I. All acts of jurisdiction, whether performed in the house of the deceased, or on the road, or within the parochial church, belong to the Parish Priest, according to the sanction of the Holy Canons and numerous resolutions of the Sacred Congregation of Rites.

II. Therefore, the right of associating a body with the church and of burial (even outside the diocese) belongs to the proper Parish Priest; and he is considered the proper one in whose parish someone has died, even if he has resided there for only a short time or superficially.

III. Funeral emoluments are due to the Parish Priests, not because of the labor performed on the bodies of the deceased, but because the Parish Priest instructs the people through preaching, celebrates divine services, administers the sacraments day and night, and pours forth prayers for the people.

Translated by churchlatin.ai, a product of Boyne Archives

IV. It cannot be said that the Parish Priest has given tacit consent to the violation of his parochial rights, simply because he sometimes had to bear with it, so that these rights would be violated by another: for what is received out of necessity should not be used as an argument. *Paulus, I, 162, de reg. iur.*

V. Therefore, in this matter, the association of bodies by the Sodality of Clergy was not valid, neither by law, nor by custom, since it was not of long standing; nor could funeral emoluments be received, which are entirely due to the Parish Priest.

In Volume III, page 41, you will find a case in which it was disputed between several parties as to who had the right to transport the body from one city to another.

[*Latin ed. p. 385*]

REINTEGRATION INTO THE PARISH. March 23, 1878. Summary of the case. It came to the attention of a certain Bishop of Gaul that a priest, Dominic M., the parish priest of the place called "S. Lapidum Commercium," was causing scandal to his people through his business dealings in stones, and that, due to his restless temperament, he frequently caused quarrels, and had caused a certain sister of a pious institute, dedicated to the instruction and education of girls, to abandon that place. Therefore, the bishop warned Dominic to cease his dealings in stones, and also to explain precisely why the aforementioned sister had left his parish. Immediately, the priest appeared before his bishop, in order to clear himself of these accusations. But it seems that he made little progress, for a few months later, letters arrived from the Episcopal Curia, dated June 7, 1874, in which his transfer to another, less important parish was decreed. The parish priest resisted and, having interposed an appeal from such a decree to the Apostolic See, requested from the Curia the letters which the apostles are called, in order to bring the whole matter before the Sacred Congregation. Despite the appeal, and after the term established in the Curia's letters for him to leave his former parish had elapsed, by order of a judge of the peace, he was ordered to leave the parochial house within twenty-four hours. Then he went to the new parish. From this place, he sent letters to the Curia, declaring that he submitted to the judgment of the bishop, and requesting the appointment papers for the new parish. The Vicar General responded that the bishop was determined that, before accepting the appointment, he should have a conversation with him and then spend fifteen days in spiritual exercises. Considering this to be too harsh a command, Dominic initially refused to obey; but when the Vicar General wrote again that he would send another priest to the new parish if, within...

[*Latin ed. p. 386*]

386 Having failed to comply with the ten-day period mandated by the

Translated by churchlatin.ai, a product of Boyne Archives

Bishop for reintegration into the parish, he petitioned the Curia, issued a written renunciation of his former parish, signed it, and simultaneously declared himself ready to comply with all the Bishop's mandates, imploring forgiveness for the scandal caused by his obstinacy. After this, he received the letters of appointment. But scarcely had he arrived at the new parish when, repentant for his actions, he began to lament the damage done to him, both in terms of honor and in terms of financial loss resulting from the transfer. Hence, with a humble letter presented to the Sacred Congregation, he petitioned for his restoration to his former parish. The Sacred Congregation, having received information from the Bishop, and knowing that the aforementioned priest had been transferred from other parishes on several occasions due to his poor conduct, and had even been punished with suspension; having also discovered that he had sent a messenger to the first parish, in which he had engaged in the business of stones; and having learned that he had injured a public official, commonly known as a "Maire," in writing, and that his disputes had been the cause of the aforementioned teacher abandoning that parish, on December 10, 1874, it responded: "Having considered the petition." Despite the strictness of this decree, Dominic persisted, arguing before the Sacred Congregation that he had been compelled by force and fear to send a messenger to the former parish and to accept the new one; and, presenting evidence, he sought to demonstrate his innocence of the charges for which he had been removed. The Bishop, to whom these facts were made known, reported that the renunciation had been obtained by force and fear, as was easily apparent from Dominic's letters; and that there were several reasons for his removal, among which he enumerated the following: "There are many things that prevented the man in question from being held in any further esteem, but especially the following: 1. Excessive expenses with which he indulged in a more luxurious table. 2. A large amount of borrowed money with which he was constantly burdened. 3. Questionable dealings in which he was involved, along with the inventory and merchandise thereof. 4. Finally, serious disputes and contentions in which he was constantly embroiled with public officials, both of this place, and also with the magistrates and administrators of the region or prefecture."

[*Latin ed. p. 387*]

Reintegration into the Parish 387 Having these things, the matter was referred to the Metropolitan by Decree: In Altenas, newly established, the petitioner may exercise his right before the Metropolitan. However, since such a judgment would not have a place, when asked to provide information on the matters presented and to reveal his opinion, the Metropolitan presented the testimonies of witnesses, already submitted by the parish priest himself, and then revealed his judgment in favor of excluding coercion. Then the customary decree was issued: Let it be recorded on the

Translated by churchlatin.ai, a product of Boyne Archives

file. After all things were properly completed, defenders were called from here and there to resolve the doubt, and, even with their dissent, according to custom, the doubt was formulated and placed at the bottom; upon its acceptance by the defender of the Bishop, the dissenting party was given the opportunity to argue about the doubt on the day of the presentation of the case. With things standing thus, the case was presented in the plenary sessions of the Sacred Congregation. Synopsis of the argument. The defender of Dominici, by proposing a double formula of the doubt, divided his argument into two parts, inquiring in the first whether there were legitimate reasons for the removal, and in the second whether the acceptance of the new parish by his client could have been an impediment to his reintegration. DEFENSE OF DOMINICI. He stated that legitimate reasons are necessary even for removing those parish priests who are called to serve in Gallia, even though they may perform their duties well to the satisfaction of the Ordinary. For since the establishment of such parishes involves a departure from the canonical regulations that favor a stable parish priest, every effort must be made to ensure that such a departure is, as far as possible, minimal; and therefore, the Holy Congregations have established the principle that no one can be removed without any cause. Indeed, in this case, only two reasons were presented, namely, the departure of the priest from the parish and the business of stones. He affirmed that both were false.

[*Latin ed. p. 388*]

Regarding the reintegration 388 into the parish: The primary cause involved letters written to the parish priest by the Superior of the Sisters of Christian Doctrine, first in the name of the Superior, then in the name of a Sister assisting her, and finally by the teacher herself who had left the parish. The defender argued that, based on the first point, the teacher had entered the town almost triumphant, largely due to the efforts of the parish priest; based on the second, she had left because the parish priest refused to formally appoint her, did not pay her the deserved compensation, and the house, which the parish priest did not repair, was unhealthy; and based on the third, it was clear that the parish priest had not been the cause of the teacher's departure, but rather that she had been pursuing benefits, and indeed, had even received compensation in advance from him. Regarding the matter of the stone trade, the defender argued that there was no negotiation where the cause of profit is anything other than wanting to obtain a more expensive business; unless, as Dominicus states in chapter 88, it is possible for someone to compare the value of a profit with a certain stone merchant, but only in order to favor a certain parish priest who was seeking stones of better quality for the restoration of his church. To make this clearer, the advocate presented letters from the recipient of the works; a testimony from the man who was in charge of the stone expe-

Translated by churchlatin.ai, a product of Boyne Archives

dition at the railway station, and finally, the testimony of an architect who asserted that he had found no advantage in this stone business that favored the parish priest. After presenting these testimonies, the defender sought to clear his client from the accusations, who had been condemned by a threefold judicial sentence; which meant that he would be burdened with inconsiderate expenses using other people's money; and as if to incite the parishioners to favor him; which, if true, would provide a strong argument, demonstrating the highest esteem with which Dominic was regarded in his parish. Therefore, he concluded that the causes for the removal were in no way relevant, and therefore the parish priest who was appealing had not been unjustly removed, and even more so, because in this case, causes of malice, hatred, infamy, scandal, and damage were present, for which, according to the interpreters...

[*Latin ed. p. 389*]

Reintegration into the parish 389: The right to remove a parish priest, even one who is removable, must be exercised with caution. The accuser alleged malice, because it was evident from the aforementioned statements that the removal was brought about only by a wicked intention on the part of the Bishop; that Dominic was the cause of the departure of the mistress and the negotiation of the property; hatred, because he considered the accuser to be someone whose scandals the parish priest had severely reproached; infamy, because the parish priest's reputation could only be restored by the benefit of reintegration after the removal; scandal, because more serious causes for the removal were spread by the parish priest's enemies; and damage, because from the old parish, the parish priest received annually fr. 1985, while from the new one, he received only fr. 110, so that each year he suffered a loss of fr. 844. Having established these points, the defender proceeded to the second part of his argument, and sought to demonstrate that the submitted resignation from the former parish and the acceptance of the new one, do not prevent his reintegration, either because they are null, or because they do not constitute a valid basis for pursuing an appeal in the appellate court. From the fact that the Bishop obtained a written resignation from the removable parish priest, the defender argued that the Bishop himself knew and admitted that a just cause was necessary for the removal; and since this cause was lacking in this case, there was reason to believe that the parish priest had been coerced into submitting the resignation. However, as stated in *De résignât.*, book 1, chapter 3, sections 4 and 5, a resignation must be issued freely, voluntarily, and with a valid reason in order to be valid; and since these conditions were not met in this case, the resignation of Dominic was open to nullity. All of this served to demonstrate the invalidity of the resignation. For, as the parish priest himself stated, the Bishop declared that his jurisdiction would expire on the first of July 1874, and the Bishop refused to grant him permission to

Translated by churchlatin.ai, a product of Boyne Archives

remain in the rectory unless he first removed his belongings; and he was given only twenty-four hours, by officials of the civil court, to do so. Furthermore, Dominic accepted the newly offered parish; but the appointment was denied to him unless he consulted with the Ordinary.

[*Latin ed. p. 390*]

390 After being reinstated to the parish, he should dedicate fifteen days to spiritual exercises. However, if he refuses to obey, a period of ten days is prescribed, and if these days pass without compliance, he would have been deprived of the second parish. Thus, the pastor was left with only two options: either to completely obey the will of the Bishop, or to lose everything. Indeed, he would lose his life, because deprived of the parish and the ability to celebrate the sacraments, he would have no further means of sustenance; he would lose his possessions, because the few belongings he had would have to be thrown away; he would lose his reputation, because he who is deprived of his office and possessions by a competent authority suffers a great loss of reputation. Pressed by these difficulties, he went to the Episcopal Curia and signed the imposed resignation. But who can believe that it was freely and spontaneously signed? Indeed, what is done under duress and fear has no validity. Chapter: Concerning matters done under duress and fear, etc., and as testified by Paris in *De Resign.*, book 2, question 1, number 10: "He who resigns a benefice out of fear of imminent excommunication, of which he was threatened by the bishop or vicarius or other ordinary, if he did not resign, can declare that he made no resignation." Therefore, the resignation should in no way be considered valid in this case, especially since there was a danger of losing both possessions and reputation. Finally, the defender argued the nullity of the resignation also on the basis of the lack of a valid cause, citing the same Paris in book 5, question 1, number 2: "It is the common opinion of all doctors that a cause is required in resignations, both on the part of the one resigning and on the part of the one accepting, 'from the part of that one... because in doubt, one does not presume a voluntary act, from the part of the superior... because he would not have accepted it if a just cause for accepting were not present.'" While arguing these points, the defender attempted to refute certain witnesses who testified that on June 28th, the pastor had been summoned before the Bishop not to sign the resignation, but because "he had publicly uttered many falsehoods, not without injury to the due honor owed to the apostolic legate, nor without detriment to religion, among the faithful or even among the clergy." The defender observed that such testimony should be rejected, since the Vicar General is one and the same tribunal as the Bishop.

[*Latin ed. p. 391*]

Reintegrationis in paroeciam 391 efficit, ideoque esset iudex et pars. Insu-

Translated by churchlatin.ai, a product of Boyne Archives

per in resignationis actu, neque verbum neque vola reperiri, ex quibus erui possit parochum vocatum fuisse ut retractaret ea quae contra apostolicum legatum dixerat. Quod si de scandalo retractando sermo esse potuit, hoc nihil aliud respicere debuit, quam scandalum ortum ex parochi oppositione mandatis Episcopi. Sed huius scandali quis auctor erit reputandus? Denique ex attestationibus trium presbyterorum ab Metropolitano transmissis, conabatur demonstrare, parochum eum in finem tantum vocatum fuisse ut antiquam dimitteret et novam accepto haberet paroeciam; scandalum vero quod opponitur nihil aliud fuisse quam protestatio de interponenda appellatione ad S. Sedem ac conquestus de sibi illatis violentus. Quapropter cum causae remotionis in casu minime adessent; cum renunciatio vi metuque facta fuerit ac sine causa, cumque ea quae opponuntur suo clienti, vel falsa vel nullius momenti essent, nihil obstare asserebat quominus in sua antiqua paroecia restitueretur.

DEFENSIO EPISCOPI. Contrarius Orator duplici ex capite defendenda suscepit ea omnia quae Episcopus gesserat. In primo totus in eo fuit, ut ostenderet parocho vel metum illatum non fuisse, vel iuste fuisse illatum, ac propterea emissam renunciationem omni ex parte in sua validitate subsistere. Animadvertebat in primis parochum novam paroeciam acceptasse per epistolam antequam ad Curiam sese conferret, quando nempe violentia et metus locum adhuc habere non poterant; insuper ex attestatione quatuor Sacerdotum, qui illi adfuerunt audientiae, erui dicebat nullam parocho factam fuisse violentiam ac sponte renunciationem emisisse. Haec vero confirmari a relatione Archiepiscopi, cui res iudicanda commissa fuerat. Neque opponi posse sustinebat, parochum adductum fuisse ad primam acceptationis literam scribendam, ex metu sine tecto remanendi, cum exspulsionis sententiae executio immi-

Reintegration into the parish of 391 was effective, and therefore he was both a judge and a party. Furthermore, in the act of resignation, no word or sign was found from which it could be deduced that the parish priest had been called to retract what he had said against the apostolic mandate. And if a discussion about retracting the scandal could have taken place, it should have concerned nothing other than the scandal arising from the parish priest's opposition to the Bishop's mandates. But who should be considered the author of this scandal? Finally, based on the testimonies of three priests transmitted by the Metropolitan, he attempted to demonstrate that the parish priest had been called only to abandon the old parish and accept the new one; and that the scandal that was opposed was nothing other than a protest against the intention to appeal to the Holy See, and the violence inflicted upon him. Therefore, since the causes for removal in this case were completely absent; since the resignation was made under duress and fear, and without cause; and since what was opposed to his client was either false or of no importance, he asserted that nothing prevented his being restored to his former parish.

Translated by churchlatin.ai, a product of Boyne Archives

DEFENSE OF THE BISHOP. The opposing advocate undertook to defend everything that the Bishop had done, based on two main points. Firstly, he sought to demonstrate that the parish priest had either not been subjected to fear, or that he had been justly subjected to it, and therefore that the resignation, in every respect, remained valid. He first pointed out that the parish priest had accepted the new parish by letter before presenting himself to the Curia, when violence and fear could not yet have had any place. Furthermore, he stated that, according to the testimony of four priests who were present at the hearing, no violence had been committed against the parish priest, and that he had issued the resignation voluntarily. This was confirmed by the report of the Archbishop, to whom the matter had been entrusted for judgment. He maintained that it could not be argued that the parish priest had been induced to write the first letter of acceptance out of fear of remaining without a roof over his head, since the execution of the sentence of expulsion was immi-

[*Latin ed. p. 392*]

392 Regarding the reinstatement into the parish, and concerning the other matter, he alleged that he had been threatened by the Vicar General in writing with the loss of both parishes; for, according to the discipline in force in Gallia, he could appeal against such decrees of removal or transfer, although the appeal had only a suspensive effect, and did not prevent the decree from taking effect. Therefore, he claimed that either the alleged threat was entirely unfounded, or it had been justly imposed. Furthermore, if the parish priest, as he ought to have done, had obeyed the Bishop's commands, and, while the appeal was pending, had transferred himself to the new parish, he would not have exposed himself to the sentence of expulsion, nor to the danger of remaining without shelter and means of sustenance. Thus, he attributed the violent expulsion (which, moreover, was instigated by the Syndic, not by the Bishop) from the parochial house, and the fear of remaining without the necessary means of living, to his own temerity and obstinacy, for which he had stubbornly refused to obey the Bishop, and for which he had scorned to repair the scandals that he had caused by contempt for the episcopal authority and by injurious statements made to the pontifical legate. From this, the Advocate concluded that either the fear was unfounded, or it had been justly imposed, and therefore, in either case, the renunciation made was valid. In the second part of his argument, the defender undertook to demonstrate that the Bishop had used his right in deciding on the transfer, and that he had legitimate reasons for doing so. To support this, he recalled that after the Concordat of 1801, two types of parish priests had been established in Gallia, namely, parish priests who are immovable, chosen with the consent of the Government from which they receive their endowment, and parish vicars, called "desservants," who are in charge

Translated by churchlatin.ai, a product of Boyne Archives

of smaller parishes or chapels, and who are freely chosen by the Bishops and can be removed; and that while these latter were formerly supported only by the alms of the faithful, today they receive a smaller pension from the Government than other parish priests, as stated by Bouix, *De Par.*, p. i, sess. 4, c. 4, cap. 2, page 2. He added that this discipline concerning removable parish priests, although opposed by many, had been approved by the Apostolic See, as evidenced by a response given by Gregory XVI to the Bishop of Leodiensi.

[*Latin ed. p. 393*]

Reintegration into the Parish 393. Furthermore, the following question was proposed: "Given the circumstances of the matter in regions such as Belgium, where a change in the laws could not be achieved, can the alteration, binding on conscience, remain in force until another disposition from the Holy See, a discipline introduced after the Concordat of the year 1801, by which Bishops often grant to the rectors of churches called 'succursales' a revocable jurisdiction, and are those rectors, if they are recalled or transferred, obligated to obey?" To this question, on May 1, 1845, the response was: "The Most Holy Father benignly approves that, regarding the governance of the succursal churches of which we are speaking, no change be made until otherwise decreed by the Holy See." Indeed, it was asserted that such a discipline had been confirmed by the Most Holy Father Pius IX. For in a rescript of October 5, 1864, addressed to the Bishop of Ã□vreux, through which the aforementioned Bishop condemned a pamphlet by a priest, Dagomer, which defended the revocation of the aforementioned discipline, the following reasons were given: "Firstly, because it is feared that Bishops might be accused if, with a seemingly plausible cause, they should carelessly transfer parish priests, commonly called 'desservants'; secondly, because the judge's role is occupied in a question reserved to the Holy See." From these, it was deduced that the Bishop had used his right to transfer Dominic, because the rectors of succursal churches, as he himself was, can be considered "either as removable vicars at the discretion of the Bishop who has care of souls, or as holders of a manual benefice, and in both cases, according to the general rule, it seems that Bishops can remove them even without cause. This rule, as noted by Bouix, *op. cit.*, p. 3, ch. 3, prop. 4, n. 3, is based on the very nature of manuality, and is entirely certain and commonly accepted as such." However, this rule, although subject to certain limitations by custom, namely that the removal should not be made out of hatred, or with detriment to reputation or serious loss.

[*Latin ed. p. 394*]

394. The reintegration into the parish of the pastor; however, he stated that in this case, these limitations should cease, when the Bishop had grave reasons for the pastor's removal. Indeed, this pastor, by using a more gener-

Translated by churchlatin.ai, a product of Boyne Archives

ous income than his position and abilities allowed, and by holding frequent gatherings and conversations in the parish house, was a scandal to the faithful and burdened himself with borrowed money; therefore, he was deemed unfit to govern that people. Furthermore, he had acquired a sad reputation because of his lies; because of injurious words spoken against his superior and against the legate of the Apostolic See; because of his irascible and turbulent temperament, and because he had given cause for disputes and complaints, and had lost all esteem and authority. All of these things, he maintained, had always been brought against this pastor, even when he had governed other parishes, as it was proven by documents from the Bishop, by certain testimonies, and by a letter from the provincial superior. He found a third just cause for the transfer in the fact that the pastor, in a certain letter written to the Bishop, which he had imprudently shown to several people before sending it, had insinuated adultery and false testimony in writing against a certain man, the magistrate of that parish; by which action, there was a danger that the pastor would be dragged before the court on the charge of defamation, and that, as a recidivist, he might be subjected to a greater punishment. Therefore, it was necessary to prevent this scandal by transferring the pastor to another parish, all the more so because that accusation was completely devoid of any basis in truth. A third cause for the transfer, the Orator found, was the pastor's practice of engaging in trade, particularly in stones, which he carried out openly. For this reason, he had been brought before the court, which judges matters pertaining to commerce, and had suffered a great detriment to his reputation. Furthermore, he recounted that the pastor had contracted debts with a certain young man and a certain merchant of sacred vestments, with whom the pastor appeared to have conducted business with deceit and fraud. He insisted that it could not be objected that the decree of transfer was invalid because the new parish was in a worse condition.

[*Latin ed. p. 395*]

Reinstatement in the parish 395. This matter, moreover, is usually inquired into only when the Bishop proceeds with a transfer without any cause, and not when so many and such grave reasons are present. Therefore, even if the parish priest suffers some damage, he must bear it, according to the well-known principle of law, which states that one does not suffer damage from that which one experiences through one's own fault. Even more so, because this parish priest, due to his manner of acting, had on several occasions offered a cause for his transfer. After these points were debated, it was concluded that Dominic freely renounced his first parish and accepted the second, without any coercion or fear; and, indeed, any fear that may have been present was justly instilled; finally, the Bishop had several and most just reasons for deciding on the transfer of this parish priest. After these points were debated by both sides, the following ques-

Translated by churchlatin.ai, a product of Boyne Archives

tion was proposed: Should the priest M. be left in possession of the parish of place N., or rather, should he be reinstated to the parish of place S. in this case?

RESOLUTION. The Sacred Congregation of Councils responded on March 23, 1878: "Affirmatively to the first part, negatively to the second, with the condition that the priest M. retract all injuries alleged against the Bishop."

FROM THE ABOVE, IT IS UNDERSTOOD:

I. That parish priests who can be removed at the pleasure of the Bishops in France have been indirectly approved by the Holy See, by order of the Supreme Pontiff Gregory XVI, so that no innovation should be made in the administration of dependent parishes, until otherwise determined by the Holy See itself.

II. That such parish priests can be equated with possessors of manual benefices, or even with removable vicars at the will of the Bishop, who has the care of souls.

III. Therefore, as a general rule, it can be established that, just as the Bishops freely grant these parishes, they can also freely and without any cause remove or transfer the rectors.

[*Latin ed. p. 396*]

396. Reintegration into the Parish. IV. This rule, however, is subject to limitations, namely, provided that the removal is not made: 1. Out of hatred. 2. With infamy or notable detriment to the removed or transferred priest. 3. To the detriment of a third party. However, these limitations, if serious reasons are present, have very little weight. V. Therefore, in practice, it is scarcely possible to conceive of a case of removal without a cause, so that it can be said of these parishes, which are transferred from manual benefices; namely, that although the pastors are theoretically removable at the will of the Ordinary, nevertheless, some cause, at least a slight one, is always necessary for the removal to be legitimate. VI. In the case of a parish priest who, by engaging in negotiations, stirring up quarrels, and performing other actions not consonant with the priestly ministry, has presented legitimate causes for translation. VII. Furthermore, the renunciation of the old parish and the acceptance of the new parish have greatly harmed him, for the will and fear with which he attempted to demonstrate the nullity of the renunciation do not appear to have been sufficiently clearly proven. FROM THE SUPREME CONGREGATION FOR PENSIONS OF BISHOPS AND REGULARS. September 20, 1878, and December 28, 1878. Summary of the case. The priest B. in September 1875 presented to this Sacred Congregation: that he had long received a pension of 107.50 livres from one of the canonical prebends of the Basilica of *Vaticanae*. However,

Translated by churchlatin.ai, a product of Boyne Archives

the titular, by a decree, recently repaid him, said the advocate, 86.60 livres.

[*Latin ed. p. 397*]

Pension 397, retaining what remains for the taxi fare. Therefore, the aforementioned Priest requested that he be granted the entire pension, believing his case to be similar to that of the Canon Regular of Mansella, who obtained a rescript from the same Sacred Congregation on August 18, 1874, stating: "The deferred payment of the due installments is permitted, not delayed." However, the Sacred Congregation, not admitting the equality of reasons in this case, responded: "The reasons are not sufficient, and therefore, for the present, the matter is to be placed in the archives." Not discouraged, the pension applicant, with a well-supported memorandum, requested that his petition be reconsidered. When this memorandum was joined with the petitions of other pensioners, both in judicial and extrajudicial form, the Sacred Congregation sent a letter to the Eminence Cardinal Vicar, requesting his opinion not only on the particular petition of the pensioners, but also on the reasons which the petitioners believed had not been properly applied, as had been done in the case of the Canons, regarding the decree *Cum nuperrimis*, especially with regard to the pensioners of the Patriarchal Chapters of Rome. The Eminence Cardinal Vicar, before expressing his opinion, observed: 1. According to the principle that where the reason is the same, the same legal provision must have the same effect, with the same consequences, both in Italy and in Rome. 2. Ecclesiastical pensions, assigned by the Holy Pontiff on Canonries and other benefices, are by their very nature and should be free from any burden whatsoever. Regarding the second point, the Eminence Cardinal Vicar favors the pensioners, to the extent that the beneficiaries do not prove that their benefices have been so diminished, due to the current circumstances in Italy, that they can no longer fully repay the pensions. If the beneficiaries do not do so, justice would be completely violated, said the Eminence Cardinal Vicar, both because of the privileged nature of pensions, and because of the disposition of the very decree *Cum nuperrimis*, to the application of which, in this case, the final cause was lacking. If the decree is invoked by the beneficiaries, so that they may deduct a portion for the taxi...

[*Latin ed. p. 398*]

Pension 398 retains its force concerning pensions; therefore, the same decree can be invoked by pensioners, so that it may be demonstrated to them the diminution of their income. For one thing arises from the other, just as an effect arises from its cause, according to the decree: that, with these incomes diminished or lost, the pensions also ought to be diminished proportionally, or cease altogether. But in order that the real and integral value of the income of some benefit may be recognized, De Luca, in *de benef*, *dise*, *go* and *çi*, says: "The proof of the value must strike at a

Translated by churchlatin.ai, a product of Boyne Archives

precise time, granted by grace."

The Archpriest of the Basilica of the Vatican, having inquired concerning the administration of incomes, submitted a report to the Reverend Canon and Chamberlain of the same Chapter, in which he indicated that the benefits of that Church had suffered a great diminution from the year 1871 to the year 1864, due to additional taxes. This diminution lessened in the years 1875, 1876, 1877.

I. A synoptic discussion.

II. Two questions were presented to the pensioners, which they wished to have discussed by the Holy Congregation, namely:

1. Whether the Decree *Cum nuperrimis* has force and can be put into effect in Rome, at least for the present, with regard to the Chapter of the Vatican?

2. Whether the pensioners ought to be compensated for the serious damages which they have already suffered, due to an ambiguous interpretation of the aforementioned decree?

The pensioners maintain that their pensions should not suffer a diminution, inasmuch as, despite the taxes, the holders [of the benefices] receive equal, or even greater, incomes relative to those incomes which they were receiving at the time the pensions were established.

From the Apostolic Dataria, it was inquired officially what was the *summa* of the pensions which are usually imposed on canonical prebends, and other benefits of the Chapter of the Vatican; and what was the income of these benefits, upon which the pensions are imposed. This was done in order to clarify the truth in this matter more clearly.

[*Latin ed. p. 399*]

Pensionis 399 And indeed, the intention of the Supreme Pontiff, when issuing the decree, was nothing other than to provide a regulation, for the purpose of dealing with present circumstances, which should be commonly followed by both the titulari and the pensioners. The Most Holy Lord [Our Pope] (in the very words of the decree) judged that this general rule should be established and maintained, namely, that if there is a loss or diminution of the revenues of benefices, both the beneficiaries and the pensioners should be affected in the same way, so that, with the aforementioned revenues diminished, their pensions should also be diminished in proportion, or cease altogether. However, the pensioners are grieved, because the titulari in Rome have hitherto followed a different rule. For, a rule of equity having been omitted, introduced by the decree, it established that the taxes imposed on benefices, taken separately, as well as partial damages suffered in the goods of the same benefices, should be proportionately divided between the titular and the pensioner, postponing the actual diminution of revenues. 1 This course of action is shown to be

Translated by churchlatin.ai, a product of Boyne Archives

unjust, because it is presented to the Pontiff as a disposition that considers only the loss and diminution of revenues assigned to each titular by the Church, and not at all the amount of taxes and burdens, independently of increases, as the Canons believed. Furthermore, it is easily understood that such a rule is contrary to justice, because while it grants all the benefit to the titulari, from a part of the increase in the value of funds, due to circumstances in Italiae, it imposes all the burdens on the pensioners, many of whom received their pension under the title of sustenance. Following this principle, let us examine how and when a diminution of pensions can take place according to such a decree. And with regard to this, it must be considered whether the actual revenues, taken cumulatively, and compared with those previously received, 1 This rule was not considered to be capable of resolving the questions arising between titulari and pensioners, according to the strictness of the law. But the Holy Pope wished, only through such a decree, that the reasons of those contending might be considered with good sense and equity, in these scandalous times.

[*Latin ed. p. 400*]

400. The pensions which the Church assigned to titulars and pensioners at the time of their appointment, whether they have been reduced in actuality or have remained unchanged in their moral value. Therefore, even supposing that, with the cessation of the cause, after a new decree, the pensions ought to revert to their original form, it follows that the titulars ought not to present separately the sum of taxes and damages, but must demonstrate cumulatively the diminution of income which they themselves received at the time the pension was imposed. To the extent that the revenues of the benefice, thus granted, have truly been diminished, it is clear that the pensioners, in proportion, also ought to have their pensions diminished. Indeed, in the aforementioned decree, the Most Holy Father wished to provide a special remedy for those titulars who, in this disturbance of affairs, had either lost all their revenues, or had suffered a significant diminution thereof, so that the revenues of the benefice itself would no longer be sufficient to bear all the burdens. From this, it is understood that the provisions of this decree do not apply until the revenues become such that they are insufficient to bear all the burdens. But, hastening to the conclusion, the pensioners stated: The titulars of the Chapter of the Vatican have not been burdened with extraordinary taxes; on the contrary, by virtue of the aforementioned conversion, the revenues of that chapter have been almost doubled. Therefore, since the final decree, upon which the Holy See based the issuance of the decree, is lacking in Rome, that decree cannot in any way be invoked to promote the interests of the Chapter of the Vatican to a greater extent, given the evident discrimination against the pensioners. Furthermore, to demonstrate that the titulars of the Chapter of the Vatican now receive greater revenues than each received at the time the pension

Translated by churchlatin.ai, a product of Boyne Archives

was imposed upon them, they added this. According to the regulations of the Chancery, all revenues which the investee will receive must be enumerated in the document of appointment of the benefice. And these are the revenues which the Holy See intends to grant to the beneficiary; a portion of which it reserves for granting a pension to someone. But even from this properly executed description, it is certain that the revenues of the Chapter of the Vatican have been greatly increased.

[*Latin ed. p. 401*]

Therefore, the Pension Fund 401 refused to pay the aforementioned full pensions, which it could only do if, as stated, it no longer received the revenues granted to it by the Holy See. Consequently, the pensioners argued that they were entitled to be compensated for the damages they had suffered due to the improper reductions, and to have the right to receive the full pension in the future. THIS WAS PRESENTED TO THOSE ENTITLED. Therefore, in order to investigate whether the reduction, of which the Decree *Cum nuperrimis* speaks, should be applied to the amount of revenue that the titular received during the time the pension was imposed, it must be determined whether the Most Holy Father truly intended that the increase in revenue be calculated from the date the pension was imposed until the time when heavy burdens were imposed by the civil government. Two periods can be distinguished in this matter: namely, the period from the imposition of the pension, and the period of the imposition of taxes, during which the revenue increased. Given this, it appears that the decree did not contemplate the increase in the intervening period being calculated, after deducting taxes, and compared with the amount of revenue during the period when the pension was imposed, because everything must yield to the benefit of the titular. For he, if his revenues had decreased, would be obligated by common law to provide the pension, even under the penalty of excommunication. Indeed, as is written by St. Alphonsus: *De Luca*, diss. gr., n. 4. "Since this beneficiary is the lord of the fruits, he must yield to the reduction of those fruits, not the pensioner; just as, conversely, he would yield to the increase, without the pensioner being able to claim any share of it, since the increase and decrease belong to the lord." Furthermore, it is worthy of note that, in case of doubt, the titulars should be favored, who perform a grave office in the choir, according to canon 55 in 6: "He who feels the burden must feel the benefit, and vice versa." From these considerations, it follows that the decree contemplated whether the actual reduction in fruits due to taxes should be applied, even if the condition of the beneficiaries was better than it was at the time the pension was imposed. Therefore, it could prevail in resolving the dispute, as stated in *Acta*, vol.

Translated by churchlatin.ai, a product of Boyne Archives

XI, p. 128, 26.

[*Latin ed. p. 402*]

The fourth article of the decree concerns the dispositive part, namely, that the reduction of revenues affects both the beneficiaries and the pensioners of the common fund. Just as, according to the Rhodian law concerning jettison, when all contribute to saving a ship, and if, in order to lighten the ship, merchandise is thrown overboard, the contribution of all is secured, because it was done for the benefit of all. The reduction in the revenues of the Vatican Chapter is certain from the year 1871 to the year 1874. However, no account is to be taken of the imputation of taxes for the intervening period, nor is anything to be done regarding the total revenues that the Apostolic Dataria previously designated. And finally, for the benefit of the pensioners, it might be calculated an increase in revenues incurred during the period of the imposition of burdens; for if a great disaster has caused damage, it would seem just to also consider the benefit derived from the same. However, this benefit must be so great that it can be calculated equitably, and it must not vary from month to month, like the value of civil revenues, which changes daily. For this would greatly disturb the administration of the Chapters. Having considered these points on both sides, two questions were to be clarified. 1. Whether and how the Decree of January 28, 1874, in Rome, can have effect and be put into execution now, at least with regard to the Vatican Chapter, in this case? 2. Whether the pensioners should be compensated for the damages they have suffered up to now, specifically through the tax (commonly called) "di ricchezza mobile del 13,20" for each hundred, retained by the Titulars in this case?

RESOLUTION. The Sacred Congregation of Bishops and Regulars, after discussing the question on September 20, 1878, decided: Regarding the first question: Affirmative. 1. You have the decree in *Cum Nuperrimis*, Vol. VII, page 325.

[*Latin ed. p. 403*]

Pension 403, Regarding II. Concerning the years 1871-1874 inclusive, Negative; concerning subsequent years, Affirmative. This question was again raised on December 20, 1878, under the form of a doubt: Whether and in what manner one should depart from the resolution passed in the general assembly on September 20 in this case? To this doubt, the Holy Congregation responded: In decisions and further. FROM WHICH YOU MAY GATHER: I. That the decree *Cum nuperrimis* must be applied even in Rome, both because, where the same legal reason exists, there should be the same arrangement; and because the law exclusively concerns all revenues of benefices existing in Italy, and according to which law all disputes concerning pensions must be settled. II. That all ecclesiastical pensions, those imposed by the Most Holy Pontiff upon Canonries, and

Translated by churchlatin.ai, a product of Boyne Archives

other benefices, are, by their very nature, exempt from any burden, since it is the nature of a pension to be without burden. III. That the reason for this exemption lies in the fact that the pensionary does not possess the benefice, but only has a personal right against the possessor of the benefice, to receive from him a portion of the fruits, established by the Holy See. IV. Indeed, since burdens, even necessary ones, pertain to the possessor himself, and the entire pension must be paid, it has always been necessary for the law to expressly state when the Holy See intends to burden the pensions, as it did through the decree *Cum nuperrimis*. V. However, by said decree, it was established that pensions should be reduced or cease, only in this case; namely, if, due to the current distress in Italy, the revenues of benefices have been reduced or entirely lost. VI. Therefore, unless the holders, with certain and clear arguments, have proven that their own benefices, in these circumstances in Italy, have suffered such a reduction (not any reduction whatsoever), so that...

[*Latin ed. p. 404*]

404. Pensions should not be diminished by any burdens whatsoever, and full pensions must be paid.

VII. In order to ascertain the reduction of such benefits, it is not necessary to consider only the burdens imposed by the government of Italy, but rather to calculate comprehensively the revenues of the benefits, as they were at the time the pension was granted, and as they are in the current state of affairs.

FROM THE HOLY CONGREGATION OF INDULGENCES, AURANENSIS. Concerning the station of the Way of the Cross. On November 15, 1878. DECREE. In France, it was customary to use fourteen images, together with crosses, for the stations of the Way of the Cross, often made of iron and cast in molds, with iron crosses to which the same number of wooden figures are attached, which, however, cannot be seen by those standing nearby. Since it has been repeatedly defined by this Holy Congregation that the indulgences granted for the pious practice of the Way of the Cross are attached only to crosses that are properly blessed; and since in the appendix to the Roman Ritual, printed by the Holy Congregation of Propaganda Fide in 1864, page 404, and in 1874, page 108, it is stated that the aforementioned crosses should be made of wood; hence, the Bishop of Auranensis, rightly doubting whether, according to the aforementioned custom, the necessary conditions are met for the acquisition of indulgences, through his Vicar, humbly petitioned this Holy Congregation to resolve three doubts.

I. Does the phrase "Ex ligno debent esse cruces" (The crosses must be made of wood), which is found in the appendix to the Roman Ritual pub-

Translated by churchlatin.ai, a product of Boyne Archives

lished in 1864, mean...?

[*Latin ed. p. 405*]

The Congregation of Aurense for the Propagation of the Faith: Does it grant an indulgence of nullity? And to the extent that it affirms. 405 Fide, page 404, obliges under II. Does the aforementioned placement of so many wooden crosses sufficiently satisfy this precept, even though the invisible ones are present on the opposing side? III. Should one consult with the Most Holy [Father] for the healing of crosses of this kind already erected? In the general congregation held in the Apostolic Palace at the Vatican on November 15, 1878, the Most Reverend Fathers decreed: To I. Affirmative. To II. Negative. To III. With due regard for good faith, one should consult with the Most Holy [Father] for the validation of stations erected in this manner, and for granting the necessary and appropriate faculties to the Bishop-Orator, who, whether by himself or through a priest of his choice, privately blesses the wooden crosses, and these blessed crosses, in the best way possible, so that no scandal arises, are so placed at the stations that they can be seen by all. Having reported all of this to the Most Holy Lord Pope Leo XIII in an audience on November 23, 1878, His Holiness benignly approved the resolution of the Holy Congregation. Given in Rome from the Secretariat of the same Holy Congregation on the day and year as above. A. Card. OREGLIA, of St. Stephen, Prefect. A. Panici, Secretary. *EX OFFICIO OBSERVATIONS*. Although Clement XII, by Brief of June 16, 1731, and Benedict XIV, by Brief of August 30, 1741, do not state that the crosses must be made of wood to be placed at each station of the Way of the Cross; nevertheless, that they must truly be made of wood is derived from two resolutions of the Holy Congregation of Indulgences. The first of these was issued by the Holy Congregation.

[*Latin ed. p. 406*]

406. The decree concerning the Stations of the Cross was issued in Camerano, on June 20, 1838, and is reported by Prinzivalli among the authentic decrees, page 397. The second of these resolutions was issued in Quebec, on June 14, 1845. Regarding the second question, concerning whether crosses or images (of the Stations of the Via Crucis) that have been destroyed or damaged can be replaced with others, individually blessed with the permission of the Bishop, without the cessation of indulgences, the response was: Yes, other crosses (which must be made of wood and in which only the blessing is conferred, and certainly not on those made of boards or images) can be replaced without the cessation of indulgences, provided that the destroyed or damaged portion is a minor part; otherwise, a new canonical erection and blessing are necessarily required. These resolutions were accompanied by an observation made by Roger Alban, from Solero, in his pamphlet entitled *Historia, Excellentia et Ritonomia Viae Crucis*,

Translated by churchlatin.ai, a product of Boyne Archives

chapter 3, paragraph 126; namely, that these crosses appear to have a closer analogy to the Cross of the Lord, and that they should be made entirely of wood. To this, the same author added the following note: "If I am not mistaken, in the very beginning of the institution, the Stations of the Sorrowful Way were established either with crosses or with images, and it was not uncommon for them to consist of oratories, chapels, and paintings or sculptures without any presence of a cross; or, if crosses were present, these were made of any material..." However, since all disputes must be considered settled now that Rome has spoken, we are now obligated to bless crosses, and indeed wooden ones, and we are compelled to change or add them, where either stone or iron crosses exclusively are present, or where only images remain. Crosses must necessarily be present, and they must be made of wood. Regarding the stations themselves, of which the question is made, it must be noted that wooden crosses, properly blessed, are not lacking, nor are they absolutely and completely invisible. It is said that they cannot be seen by those standing directly in front, which does not exclude the possibility that they can be seen by those standing to the side.

OPINION OF THE CONSULTOR. Regarding the first question, it was deemed that the affirmative response should be given: for in order to properly erect the Stations of the Via Crucis, nothing more is required than a blessed cross from a priest.

[*Latin ed. p. 407*]

The decree of Aurenensis, dated 407, grants the faculty [to use images], but images are not required. However, the Cross must, without fail, be made of wood. For we are saved through the wood of the Cross, and therefore, the Holy Church sings on the Friday of Holy Week: "Behold the wood of the Cross, in which the salvation of the world did hang." The only condition that is imposed for the erection of the Stations of the Cross is essential and must be observed under pain of nullity. Regarding the second question, it was considered that a negative answer could be given; for if the Cross, which is uniquely required, cannot in any way be seen, then it must be considered as if it does not exist. Regarding the third question, it was judged that it is not necessary to consult the Most Holy [Pope] for the correction of the Crosses in Stations of the Cross already erected, but rather to propose a prudent method for their remedy. THEREFORE, IT IS UNDERSTOOD: I. That, for certain, all must have that the crosses, and indeed wooden crosses, must be present at each station of the Stations of the Cross, although it was not previously defined whether a cross, and the same wooden, or another image, should be erected. II. That the single condition, which must be considered essential and observed under pain of nullity, for the erection of the Stations of the Cross, is that the Cross must necessarily be made of wood. III. That the method devised by new artificers, by which they construct the Stations of the Cross from cast iron, must be completely rejected, since it

Translated by churchlatin.ai, a product of Boyne Archives

entirely deprives the eyes of the faithful of the sight of the wooden Cross. IV. And therefore, the Stations of the Cross can only be properly erected with images, whether painted or sculpted, because, according to several decrees, the blessing falls only upon the crosses: and the essence of the sacred journey consists in that they are made of wood, because the Cross of Christ was made of wood.

Bearing in mind the desire of the Apostolic See, which has always striven to remove all abuses from the Holy Liturgy, we believe it is appropriate to mention here another decree, although ancient, by which it wished to correct other abuses, which are also proper to our time. Therefore, as if through the resolutions mentioned above, the Apostles...

[*Latin ed. p. 408*]

Tarantasien. 408 TARANTASIEN. Concerning the faculty of granting the blessing with a Plenary Indulgence at the point of death. Dated November 15, 1878. The Bishop of Tarantasien. After mature deliberation on the decisions of the Holy Congregation concerning Indulgences regarding the blessing at the point of death, and especially after considering the decision of September 20, 1775; and considering, on the other hand, a certain custom that prevailed in that Diocese concerning the delegation of the blessing, the aforementioned Bishop humbly petitioned the Holy Congregation, proposing four questions to be resolved. DECREE. I. Whether a delegation of the power to administer the blessing at the point of death, made in a general manner, for example, in ecclesiastical gatherings, so that all present priests, or even others who have care of souls, are authorized, even if they are not present at the gatherings, is valid? The Holy See, having taken care to eliminate abuses that had begun to creep in concerning the Stations of the Cross, wished to eliminate other abuses concerning the blessing of Holy Medals, through the following decree. OF THE CITY. Since the question was proposed to the Congregation of Indulgences and Sacred Relics: Whether it is permissible to grant indulgences to Holy Medals with the images of the Blessed, or of other Saints not described in the Roman Martyrology, to whom indulgences can be applied, and since the same Sacred Congregation deemed it necessary to consult the Congregation of Sacred Rites on this matter; therefore, after the aforementioned question was presented in the same Congregation, the Most Reverend Fathers, under the direction of the Prefect of the same Sacred Congregation, decided that indulgences should not be granted in the future, except to Saints described in the Martyrology and canonized. This day, June 16, 1674. NOTE. In order to remove any anxiety that might arise from corollary 2°, page 159 of this volume, we gladly add the following: that corollary refers to the negative part of the first resolution of the first question. It is clear that the second part of the resolution has not been carefully considered; for if new conditions are added to be fulfilled, then, from that very resolution, what is otherwise

Translated by churchlatin.ai, a product of Boyne Archives

prohibited is permitted.

[*Latin ed. p. 409*]

Tarantasia. 409 II. Whether a Bishop can delegate not only all Parish Priests, but also Vicars, who most frequently assist those Parish Priests who are dying and laboring in their final agony, and administer the Sacraments of that Church? III. Whether the response of the Holy Congregation of the day of September 20, 1837, concerning the third part, should be understood as pertaining to a delegation made specifically and in writing for each individual case? IV. Whether the faculty of delegating the administration of the Sacrament of Confession, and of choosing a confessor, as is mentioned in the aforementioned decision, loc. cit., must be numerically expressed in the very grant, or in the initial delegation? In the general Congregation held in the Apostolic Palace at the Vatican on November 15, 1878, the Most Reverend Fathers responded: Regarding I and II. According to the Benedictine Constitution "Pia Mater," the Bishop can delegate to one or more secular or religious priests, as many as he prudently judges necessary according to the number of souls, to impart the Papal Blessing with the application of a Plenary Indulgence in articulo mortis, to those within his Diocese. Regarding III. Negatively; however, it is more prudent if the delegation is made specifically and in writing. Regarding IV. Negatively. After all of these matters were presented by me, the aforementioned Secretary, to His Holiness Pope Leo XIII in an audience on November 23, 1878, His Holiness approved the resolution of the Holy Congregation. Given at Rome, from the Secretariat of the same Congregation, on the day and year as above. A. Card. OREGLIA, Prefect. A. Panici, Secretary. *EX OFFICIO ADMONITIO:* The Church, with the Blessing and the Plenary Indulgence, rejects those faithful who are struggling in their final agony. The right to impart this remains with...

[*Latin ed. p. 410*]

410. Concerning the granting of blessings in Taranto. The Apostolic See, formerly delegated this power to Bishops, provided they requested it for a period of only three years, and under this law, only they themselves, or their Vicars, could grant this blessing. And only in cases of pressing necessity, and indeed when occurring at night, could the Bishop delegate a pious priest to perform this office, on any occasion. This faculty, granted with restricted limits, was considered by Benedict XIV through the Constitution *Pia Mater Catholica Ecclesia*. For, in the administration of the dioceses, both the Ancona diocese and the Bologna diocese, he had learned through experience that many faithful, deprived of the benefit of such a blessing, were approaching their final day. Therefore, in the aforementioned Constitution, he decreed that, not only from Patriarchs, Primates, Archbishops, and Bishops, but also from lower prelates, in any territory separated

Translated by churchlatin.ai, a product of Boyne Archives

and lacking true jurisdiction, who requested the power to grant this blessing and indulgence, it should be granted to them by a brief, not only for three years, but as long as they held office in the Church and dioceses. Furthermore, he granted them a broader faculty for delegation than before. He permitted that one or more pious priests, whether secular or regular, as they shall judge necessary, may delegate in their territories those who, while they themselves are the pastors, are detained by some legitimate impediment, even if such an impediment occurs during the day, to impart this blessing with the full application of the indulgence to the faithful mentioned in the aforementioned article, and that they may also appoint and delegate as many secular or regular priests as they deem necessary for this purpose within the diocese, and that they may also remove them and delegate others in their place, according to their own judgment and prudence. He also declared that such an indulgence does not expire with death, as long as the delegated jurisdiction remains in those matters which are not.

[*Latin ed. p. 411*]

Tarentaise. 411. Concerning justice, but also concerning grace, it ought to remain even after the death of the delegating authority. And concerning those who are delegated, it was decreed: Since We permit these same Bishops and Prelates to be able to delegate this faculty to one or more priests, according to the opportunity and necessity of the inhabitants, cities, places, and dioceses, We decree and determine that such delegations shall not expire with the death or cessation of the delegating authority, but the power granted to them shall continue until the arrival of a new prelate, to whose judgment We leave it to confirm them in this office, or to remove them. Regarding the faculty of delegating in the Diocese of Vindana (in the island of Great Britain), certain questions arose, which were presented on September 20, 1775, to the Holy Congregation of Indulgences under the following doubt: The Bishop, having delegated someone to administer the blessing at the point of death, with the power of delegation: first, ought he to delegate only a few priests, so that the desire for this blessing and the indulgence attached to it may be greater, and so that greater reverence may be shown to both? Second, can he delegate all confessors in his diocese, so that not even one of his flock may be deprived of such grace, if it can be done? Third, can he delegate all directly and specifically, or many priests constituted in dignity, and indirectly and generally all confessors, with these words: "To our beloved in Christ, etc., We delegate, choose, and appoint you, so far as you are able, etc., and furthermore, whoever confessors you may choose from among you, once or repeatedly, and whenever it may be necessary, We likewise choose and appoint to confer the same grace." Is this method of delegation valid? The Holy Congregation responded: Affirmative to the first part, negative to the second part; affirmative to the

Translated by churchlatin.ai, a product of Boyne Archives

third part, as regards the specific delegation of parish priests living in the countryside. These days, the Bishop of Tarentaise has been in doubt as to whether the ancient custom of his diocese, introduced by his predecessors, was compatible with the aforementioned delegation, and with the decision of the Holy Congregation of Indulgences.

[*Latin ed. p. 412*]

412. Concerning the granting of indulgences to the people: Therefore, having already presented four points, let us now examine the doubts. Regarding these same doubts, it seems evident that the Pope, through the Constitution *Pia Mater*, intended that the acquisition of a plenary indulgence, attached to the Papal Blessing, should be made easier; but not in such a way that this benefit would be common and readily available to all. For, although a greater power than before has been delegated to the Bishops, and their judgment has been entrusted with determining the number to be delegated; this power and judgment are nevertheless limited by the necessity of the designated dioceses. If a Bishop were to disregard these limits, he would seem to be acting contrary to the letter and spirit of the aforementioned Constitution. But if this number is to be determined by the necessity of the dioceses, then only a few are to be delegated, according to the aforementioned declaration in Vindana, in which it is defined that Bishops cannot delegate all of the confessors in their dioceses, but must delegate only a few priests, so that there may be greater desire for this blessing and the indulgence attached to it, and so that greater reverence may be shown to both. From these premises, a reason for doubt arises concerning the validity of a delegation made in a general manner, to all ecclesiastical bodies, which is the subject of the first doubt; because such bodies are often composed of many priests. For the same reason, it may be doubted whether a Bishop can delegate, as is asked in the second doubt, not only all the parish priests, but also all the vicars who, in the last moments of the dying, take the place of the parish priests. The third doubt, taken from the aforementioned declaration in Vindana, to which the answer was affirmative concerning parish priests specifically residing in the countryside, gives rise to doubt from the very wording of the question. Indeed, the word "specifically" and the formula of delegation inserted in the doubt, conceived in the singular number, and directed to individuals, seem to indicate that the delegation is to be made specifically to each individual. However, the aforementioned formula, "To our beloved in Christ, etc.," which is usually used only in documents of greater importance, suggests...

[*Latin ed. p. 413*]

Tarentaise. He knows, and indicates in some way, that the aforementioned delegation should also be put in writing. Regarding the last question, it must be noted that it is within the power of the delegating authority

Translated by churchlatin.ai, a product of Boyne Archives

to grant or not grant the aforementioned right of choice to the delegate, and therefore to entrust the exercise of that same right to him, either for a single occasion, or multiple times, or whenever it may be necessary. The first [Consultor] indicates that the power to grant a plenary Indulgence in articulo mortis should be interpreted benignly and broadly; for Benedict XIV granted to the Bishops the power to delegate this, so that no corner of the world would be without this aid for those professing the Catholic religion, at that very moment when they are brought to the brink of salvation. For if any priest, lacking an approved [priest], can absolve from sins and censures in articulo mortis, much more so can he grant a plenary Indulgence, if another priest with that power is present. It should not be overlooked that in many dioceses of Germany, all priests who have care of souls possess, by virtue of the rubric in the Ritual, the power to grant a plenary Indulgence in articulo mortis, and thus they correspond to the intention of Benedict XIV, namely, that no corner of the world should be without this aid for those professing the Catholic religion. Therefore, the Consultor says, I believe that Bishops can grant this jurisdiction in writing or verbally, and it is sufficient that they manifest their intention.

THE CONSULTORS' OPINIONS. The second Consultor, having recalled whatever the Benedictine Constitution decreed on this matter, and having considered the responses given in Vienna by the Holy Congregation of Indulgences, considered that, in answering the first question of the Bishop of Tarentaise, it should be said: "According to the Constitution, *Pia Mater*, the Bishop, or another inferior Prelate, can delegate, for the granting of the Papal blessing, together with the application of a plenary Indulgence in articulo mortis, to one or more pious priests, secular or regular, as many as..."

[*Latin ed. p. 414*]

Tarantasien. It was deemed necessary to prudently judge the number of those required, whether they have care of souls, or belong to a special group of clergy, or otherwise. Regarding the second question, it was considered that an affirmative answer was possible in all cases, as in the preceding one. Regarding the third question, he said: "Although a delegation has been validly made, either to a particular group of priests or only verbally, provided that it is sufficiently clear and defined; nevertheless, it will be more prudent if it is done through a written document, and the priests are designated individually, insofar as possible."

Regarding the fourth question, the Consultor noted: from the aforementioned resolution in Vindana, the Bishop can, when dealing with parish priests living in the countryside, not only delegate the parish priest himself, but also any confessor through him, to be chosen at his own discretion, once or multiple times, and whenever it is necessary. These words exclude the necessity of determining the number of cases, which would be contrary to

Translated by churchlatin.ai, a product of Boyne Archives

the spirit of the praised Constitution *Pia Mater*. Therefore, regarding the aforementioned question, he said, the answer would be: "negative, with regard to the very process of the decision."

FROM WHICH YOU MAY GATHER: I. That, moved by charity towards the dying faithful, as well as by reverence for the aforementioned blessing, Pope Benedict XIV desired that no corner of the world remain where the cause of salvation of the Christian faithful would be put in danger due to the lack of this blessing, with plenary indulgence, to be imparted to those struggling in their final agony. II. Therefore, the limits were extended, which previously restricted the delegation of this kind of faculty, both in terms of time and in terms of the persons to whom it was granted.

Regarding the manner of delegation, nothing is prescribed in the Benedictine Constitutions. It is indeed advisable to proceed with the utmost caution in a matter of such importance, and to avert any possible doubt.

[*Latin ed. p. 415*]

Concerning the granting of Indulgences. 415 III. It is also decreed that such concessions should not expire by the death of the grantor; since the jurisdiction delegated in matters concerning not justice, but grace, ought to remain even after the death of the delegator. IV. Bishops may, according to the Constitution *Pia Mater*, delegate to others to impart this blessing, as many secular or regular priests as they shall prudently judge necessary, according to the number of souls, without any limitation. V. It is not strictly required that such delegation be made individually and in writing; but since we are dealing with a matter of great importance, in which the danger of doubt must be entirely absent, it is advisable that, by means of a written document and specifically naming the person, the faculty of imparting the blessing at the point of death be granted. VI. The Bishop, when delegating a parish priest residing in the countryside, with the faculty of choosing another confessor, to impart this blessing, should not be restricted as to the number of cases in which the delegated parish priest may choose another; for this would be to the detriment of souls, and would be contrary to the spirit of the aforementioned Constitution. BERGAMO. Concerning the Indulgence of the *Porziuncola* with regard to distance. November 15, 1878. DECREE. In the town of Martinengo, in the Diocese of Bergamo, there is a church which formerly belonged to the Franciscan Order, who were expelled from it in the year 1810. But even after their expulsion, the gathering of the faithful to that church on August 2nd, for the purpose of gaining the Indulgence of the *Porziuncola*, continued until the year 1860, when it was occupied by soldiers, and religious services were suspended. After these events, the pastor of that church obtained a Brief, in which, with the usual clause that there must be no other church within that place, or

Translated by churchlatin.ai, a product of Boyne Archives

within a distance of at least one Roman mile,

[*Latin ed. p. 416*]

416 In Bergamo, to the Franciscan Order, permission was granted for seven years, so that within that church, the Indulgence of the Porziuncola might be obtained. This church, meanwhile, having already been restored to the service of the Franciscan Order, was granted to the Institute of the Holy Family in Bergamo, for the Christian education of the children of poor villagers. And when, in the year 1870, at the request of the Bishop of Tiberias, the Coadjutor Bishop of Bergamo, the privilege of the Porziuncola was extended for seven years, and with the aforementioned clause, through separate briefs, to the faithful of the aforementioned church of the praised Institute, so that they might again have access to that church for obtaining the Indulgence of the Porziuncola, the concession was renewed at the end of seven years for another seven years, and with the same clause, for the benefit of both churches, namely the parish church by a brief of May 8, 1870, and that of the Institute by a brief of June 22 of the same year. But since these two churches are less than half a mile apart, and the praised Bishop, fearing that the church of the Institute, since it formerly belonged to the Franciscan Fathers, might be an impediment to the aforementioned parish church from making use of this concession, this doubt was presented by Erño, the Secretary of Briefs. After considering this particular case, he considered it advisable to refer the question to this Holy Congregation. Therefore, the following general formula was proposed: Whether, if no church actually belongs to the Franciscan Fathers, several churches in the same city, indeed in the same parish, which are not at all far from each other in terms of distance, can enjoy the privilege, commonly called "the Porziuncola." In the General Congregation of the Holy See held in the Vatican Apostolic Palace on November 15, 1878, the Most Reverend Fathers replied: Affirmative; but, considering the special prerogative of the Indulgence of the Porziuncola, it is advisable that, in new concessions, the clause regarding distance, which is usually applied to churches of the Order of Saint Francis, be extended to all other churches endowed with this privilege. Having made these statements, I, the undersigned Secretary to the aforementioned Congregation, reported them to His Holiness, Pope Leo XIII.

[*Latin ed. p. 417*]

Bergamo. On November 23, 1878, in an audience, His Holiness approved the resolution of the Holy Congregation. Given in Rome, from the Secretariat of the Holy Congregation, on the day and year mentioned above. AL. Card. OREGLIA A S. STEPHANO, Prefect; A. Panici, Secretary. Synopsis of the discussion. OFFICIAL OBSERVATIONS. Although it is desirable that a more accessible way be opened to all the faithful to obtain the most important Indulgence of the Porziuncola, which was originally only obtainable in

Translated by churchlatin.ai, a product of Boyne Archives

the chapel of the Porziuncola; it also seems advisable that the acquisition of this Indulgence not be made so easy and obvious. So that the faithful may be able to obtain it with the same ease with which other Indulgences are commonly obtained. It also seems that a general rule is usually applied, whenever the granting of a particular benefit, such as the Indulgence of the Porziuncola, is being considered. Lest the idea of an extraordinary benefit, which they receive, gradually weaken in the minds of the faithful, and the desire to receive it be diminished, due to excessive ease. Therefore, at least the rule should be maintained, according to which two churches, which are not more than a mile apart, should not be endowed with this privilege. From which it follows that many of the rivalries and competitions that are usually born are avoided, when two neighboring churches are endowed with this privilege. From this rule, the Franciscan churches are extraordinarily exempted by the Brief *Splendor paternae gloriae Gregorii XV*. OPINION OF THE CONSULTOR. The Consultant expressed a favorable opinion, considering both the unique nature of this Indulgence, and the reason by which the Holy Fathers have extended this Indulgence to all Franciscan churches, and to others not belonging to the order, and also the practice by which this extension is now granted. Acts, vol. XI, page 129, line 27.

[*Latin ed. p. 418*]

418 Bergomen. Regarding the first point, the Consultor stated, the nature of the Indulgence known as that of the Porziuncula is clearly evident from the mind of St. Francis. For, having obtained from Christ that all who would enter the Church of St. Mary of the Angels [Puebla] might obtain a plenary indulgence, he requested this grace, by the command of Christ Himself, from Pope Honorius III. When asked by Honorius how many years the Indulgence should be limited to, he replied, "Not years, but souls." From this, it is easily understood that his desire was that all the faithful might obtain this singular gift. This is also gathered from other words of the same saint, spoken in the promulgation of this Indulgence: "I want you all to go to paradise." And indeed, although the Indulgence was limited to one day (August 2nd), the faithful could still obtain it as often as they visited the aforementioned Church on that day. Regarding the second point, the Consultor observed that the Roman Pontiffs, successors of Honorius, extended this great grace to many other churches. From these concessions, it is evident that in the Church of Rome, there was the conviction that this singular favor, granted by Christ for the good of all the faithful, was made easier for all. All of this is confirmed by the practice of the Church of Rome. For there are many churches in Rome that enjoy this Indulgence, and neither are they churches of the Franciscan Order, nor are they churches belonging to other Orders, located within a distance of one mile; and if, in the case of the former, one could say that an explicit dispensation intervened, certainly

Translated by churchlatin.ai, a product of Boyne Archives

in the case of the latter, no mention is made of any distance. It commonly happens in the Secretariat of Briefs that Apostolic Letters are issued for churches that are not of the Order of the Minor Franciscans, in which a clause is added regarding the distance from Franciscan churches; but in no case is any mention made of the distance from other churches that do not belong to the Order. And the clause, "provided that no church of the Franciscan Order is located in that place, or at least within a distance of one mile," is included for this reason, so that the privilege of the Order to which this singular Indulgence was first granted may be preserved.

[*Latin ed. p. 419*]

Bergamo. From INDIA, number 419: I. All churches, already endowed with this privilege, can enjoy the same benefit until the expiration of this decree; even though they are located in the same city and parish, and are not more than one Roman mile apart; provided that there is no church actually belonging to the Order of Saint Francis. II. The Indulgence known as that of the Porziuncula, having been considered by the Holy Congregation of Indulgences to be so very important, that in future grants of the same Indulgence, a clause regarding distance should also be included, with respect to all churches endowed with this privilege, which do not belong to the Franciscans. FROM THE HOLY CONGREGATION OF RITES: Decree concerning burials to be performed on the days of Saint Mark and the Rogation Days, or on the eve of Pentecost. QUEBEC. The Most Reverend Monsieur Franciscus Baillargeon, Archbishop of Quebec, presented the following question to the Congregation of Holy Rites: "In a parish where, besides the parish priest, there is no other priest, if a burial occurs on the days of Saint Mark and the Rogation Days, or on the eve of Pentecost, which cannot be postponed or anticipated, should the burial be performed without a Mass for the Dead; or rather, should the office of the day be omitted; or at least, should a Mass of this office be celebrated as a Mass for the burial?" The Holy Congregation of Rites, after deliberation, responded in writing to the aforementioned Secretary as follows: Affirmative to the first part, negative to the second and third. And thus it was written and it was ordered to be observed. July 3, 1869. C. Cardinal Patrizi, Bishop of Porto and Santa Rufina, Prefect. D. Bartolini, Secretary.

[*Latin ed. p. 420*]

BY THE DIVINE PROVIDENCE OF OUR LORD LEO XIII, PAPAL LETTERS, whereby a universal Jubilee is announced to implore divine assistance.

LEO XIII

TO ALL THE FAITHFUL, GREETINGS AND APOSTOLIC

Translated by churchlatin.ai, a product of Boyne Archives

BENEDICTION.

Our Predecessors, the Supreme Pontiffs, following the ancient tradition of the Roman Church, from the very beginning of the Apostolic ministry, have been accustomed to open the treasury of heavenly graces to all the faithful with paternal generosity, and to indicate common prayers within the Church, so that they might offer them the opportunity for spiritual and salutary benefits, and to incite them to seek the help of the eternal Shepherd through prayers, works of penance, and acts of charity towards the poor. This, indeed, on the one hand, was like a propitious gift, which the highest authorities in religion bestowed upon their children in Christ from the very beginning of the Apostolic ministry, and as a sacred pledge of the charity with which they embraced the family of Christ; on the other hand, it was a solemn duty of Christian piety and virtue, by which the faithful, united with their pastors and the visible Head of the Church, would serve God, so that the Father of mercies might not only protect His flock, but also...

It is not infrequent that doubts arise as to how the laws or general decrees of the Roman Pontiffs are to be applied to particular cases. Therefore, let the readers of these writings recall Vol. VIII, pages 266, 359, 485, 554, in which we presented numerous doubts and declarations concerning the Jubilee of the year 1875, announced by the Encyclical Letter of Pius IX. These declarations were collected, with the kindness of superiors, in the Archives of the Sacred Penitentiary.

[*Latin ed. p. 421*]

With these words, we invoke that the Shepherd of His flock might deign to regard us with favor, to help us, and to protect and nourish us. Guided by this thought, and as the Nativity of Our Lord approaches, following the example of Our Predecessors, We have decided to announce an indulgence, similar to a general Jubilee, to the entire Catholic world. Indeed, We know how necessary the abundance of divine graces is for Our weakness in the arduous ministry that We sustain; We know from long experience how grievous is the condition in which We find ourselves, and how greatly the Church labors in these times, beset by public affairs that are deteriorating, by the disastrous designs of wicked men, and by the very threats of heavenly censure, which have already fallen severely upon some, and We fear that worse evils are to come. Truly, since the particular benefit of the Jubilee pertains to the healing of souls, to the practice of works of penance and charity, to the more fervent exercise of the duties of prayer, and since the sacrifices of justice and the prayers, offered with the united effort of the entire Church, are so pleasing to God and so fruitful that they seem to move divine mercy, We firmly believe that the Heavenly Father will regard the humility of His people, and that, with things improved, He will bring the light and solace of His desired mercies. For, as the great Leo also said,

Translated by churchlatin.ai, a product of Boyne Archives

if, through the grace of God, the vices of our manners are overcome by spiritual exercises, even the strength of our bodily enemies will yield, and those who have been made infirm by us will be healed, not because of their own merits, but because of Our own amendment. Therefore, We earnestly exhort all and each of the children of the Catholic Church, and We implore them in the Lord, to join their prayers and supplications to Ours, and to perform the duties of Christian discipline and piety, and to use, with the help of God, most diligently, for the benefit of their souls and for the good of the Church, this grace offered by the Jubilee, in this time of heavenly mercy. 1 Serm. III, al V, in Anniv. Assumpt. suae.

[*Latin ed. p. 422*]

422 Apostolic Letters. Therefore, confident in the mercy of Almighty God and by the authority of the blessed Apostles Peter and Paul, and exercising that power of binding and loosing which the Lord has permitted us, though unworthy, to exercise, We grant to all and to each of both sexes who are faithful to Christ, residing in Our beloved City, or who come to it, that if they visit the Basilica of Saint John Lateran, the Principal Church of the Apostles, and the Basilica of Saint Mary Major, from the First Sunday of Lent, that is, from the second day of March, up to and including the first of June, which will be the Sunday of Pentecost, twice, and there, for a certain period of time, offer devout prayers to God for the prosperity and exaltation of the Catholic Church and of this Apostolic See, for the eradication of heresies, for the conversion of all who are erring, for the concord of Christian princes, and for the peace and unity of the entire faithful people, and according to Our intention, and if they fast once within the aforementioned time, using only simple foods, except on days granted in Lent, or by another similar fast prescribed by the Church, and if they have confessed their sins and received the most holy Sacrament of the Eucharist, and if they have given alms to the poor or to some pious work, as devotion suggests to each, We grant them the fullest remission of all their sins, as is customarily granted to those who visit certain churches within and outside the aforementioned city during the Jubilee year; and We also decree that this indulgence may be applied to the souls who, united to God in charity, have departed from this life, as a form of suffrage. Furthermore, We grant to the local Ordinaries the power to...

[*Latin ed. p. 423*]

Apostolic Letters 423 to secular and regular congregations, to sodalities, confraternities, universities or colleges that process through the aforementioned churches, allowing them to reduce the number of these visits at their own prudent discretion. We grant, moreover, that those traveling by sea or land, having returned to their homes or to a certain station, after having completed the aforementioned works and having visited the cathedral

Translated by churchlatin.ai, a product of Boyne Archives

church, or the principal church, or the parish church of their domicile or of that station, may obtain and enjoy the same Indulgence. To regular persons of both sexes, even those perpetually residing in convents, as well as to all others, whether lay or ecclesiastical, secular or regular, who are in prison or captivity, or who are afflicted by some bodily infirmity, or by any other impediment, and who are unable to perform the aforementioned works, or some of them, We grant and allow that the confessor may, with the approval of the local Ordinary, substitute these for other works of piety, or postpone them to a later time, and may impose upon them those things which the penitents are able to accomplish, with the further faculty of dispensing with regard to Communion for children who have not yet been admitted to their First Communion. Furthermore, We grant and allow to all and each of the faithful of Christ, whether lay or ecclesiastical, secular or regular, of any order and institute, even those specially named, the license and the faculty to choose any secular or regular confessor, with the approval of the Ordinary, who may, within the aforementioned time, as those who approach him for confession, grant them the Jubilee in their minds, and fulfill the other works necessary to obtain it, for this occasion and in foro conscientiae only, from excommunication, suspension, and other ecclesiastical censures.

[*Latin ed. p. 424*]

424. Apostolic Letters containing sentences and censures imposed by law, or by any person, or inflicted by local Ordinaries and by Us or the Apostolic See, even in any case whatsoever, and reserved to the Supreme Pontiff and the Apostolic See in a special manner, and which, although granted in a concession, however extensive, would not otherwise be understood to be granted, nor also from all sins and excesses, however grave and enormous, even those reserved to the same Ordinaries and to Us and the Apostolic See, as aforesaid, the salutary penance and other things legally prescribed being imposed upon them, and, if heresy is involved, after prior abjuration and retraction of errors, as is fitting, absolve; nor also to change any vows whatsoever, even those sworn and reserved to the Apostolic See (of chastity, of religion, and of obligation, which have been accepted from a third party, or in which the prejudice of a third party is involved, always excepted, and also penal vows, which are called preservatives against sin, unless the future commutation is judged to be such that it does not restrain from committing sin no less than the matter of the prior vow), into other pious and salutary works, and to grant dispensations to penitents of this kind in sacred orders, even regular ones, concerning hidden irregularities that prevent the exercise of those orders, and concerning the attainment of superiors, only for the violation of censures, and to be valid. However, We do not intend by these present enactments to grant dispensations concerning any other irregularity, whether arising from fault, or from defect,

Translated by churchlatin.ai, a product of Boyne Archives

or public, or hidden, or from any known or unknown incapacity, or disability in any way, nor to grant any faculty concerning the aforementioned dispensations or habilitations, and to restore to the previous state, even in foro conscientiae: nor do We intend to derogate from the Constitution with appended declarations, published by the blessed Pope Benedict XIV, Our Predecessor, which begins with the words "Sacramentum Poenitentiae"; nor finally, to apply these present enactments to those who have been expressly excommunicated, suspended, interdicted, or declared to be subject to other sentences and censures, or publicly denounced by Us, or by the Apostolic See, or by any Prelate, or ecclesiastical judge, unless within the aforementioned time.

[*Latin ed. p. 425*]

Apostolic Letters, 425, and with the parties involved, having agreed upon the terms, in no way may they grant or should they grant [absolution]. But if, within the prescribed time, they are unable to fulfill the judgment of the Confessor, we grant that they may be absolved in the forum of conscience, solely for the purpose of obtaining the Indulgences of the Jubilee, with the obligation of fulfilling what is required as soon as they are able. Therefore, by virtue of holy obedience, by the tenor of the present document, we strictly command and order all Ordinaries of places wherever they may exist, and their Vicars and Officials, or, if they are absent, those who exercise the care of souls, that when they have received these present letters, or even printed copies thereof, they publish them, or cause them to be published, through their Churches and Dioceses, Provinces, Cities, towns, lands, and places, and that, as far as possible, the people be duly prepared by the preaching of the Word of God, and that they designate the Churches, or the Churches, to be visited, as mentioned above. Notwithstanding the Apostolic constitutions and ordinances, especially those in which the power of granting absolution in certain cases expressly mentioned is reserved to the Roman Pontiff for the time being, so that neither similar nor dissimilar grants of Indulgences, and powers of this kind, may be granted to anyone, unless there is an express mention of them, or a special derogation; nor also the rule concerning not granting Indulgences in imitation of, and of the statutes, customs, privileges, and Indulgences granted and conceded to those Orders, Congregations, or Institutes, even those strengthened by oath, Apostolic confirmation, or any other means, approved and renewed: concerning all and each of these, even if there is not a special, specific, express, and individual mention, or any other expression of the tenor of them, or of their entirety, but rather the same is understood by general clauses, we hold that the tenor of the present document is sufficiently expressed, and that the form contained

Translated by churchlatin.ai, a product of Boyne Archives

therein is observed, and in this case, we specially nominate...

[*Latin ed. p. 426*]

426. Apostolic Letters, being born and expressly for the effect of the foregoing, we derogate from all other things, whatever they may be, which are contrary to these. However, in order that these present documents, which cannot be brought to individual places, may more easily come to the knowledge of all, we wish that, through transcriptions of these, or even printed copies, signed by the hand of a public Notary, and sealed with the seal of a person in an ecclesiastical office, the same full faith be given in all places and among all peoples, as would be given to these present documents if they were exhibited or shown. Given in Rome, at St. Peter's, under the Fisherman's Ring, on the fifteenth day of the month of February, in the year 1879, in the first year of Our Pontificate. L. Card. NINA. FROM THE HOLY CONGREGATION FOR THE DISPENSATION FROM IRREGULARITIES THROUGH SUMMARY REQUESTS. On June 15, 1878. Hyacinthus R., of the diocese of L., humbly approached, explaining that he was called by Divine Providence to the clerical state, having completed studies, both in the humanities and in philosophy, in the Seminary of L., and having for a year devoted himself to theological disciplines. But although he greatly desires to ascend to the order of the Priesthood, "his wish cannot be fulfilled," because he suffers from a certain bodily defect, namely, a hunchback, "although not so great as to provoke loud laughter, nor to inspire horror." Therefore, he humbly requested that, if he should be found irregular, he be dispensed from any irregularity. The Reverend Ordinary of L., having heard the above, and with his authority...

[*Latin ed. p. 427*]

Dispensation from irregularity 427 was granted, and moreover, the Prelate did not hesitate to add his own prayers. When requested to send a photograph of the candidate, the Bishop immediately complied with the instructions of the Sacred Congregation, while also again requesting a dispensation from the aforementioned irregularity, because, as he himself stated, "there is great hope that, given his good qualities, intelligence, and character, he may be able to contribute to the salvation of souls, especially in a rural parish." After this, he was again requested to "report on the candidate's height, on a previous examination before the master of ceremonies, and to indicate whether, without any deformity, he can fully perform all the actions of the Sacrifice." To this, he responded: "The candidate's height reaches one meter and fifty-three centimeters." Regarding the examination, everything was carried out without any deformity.

A synoptic discussion:

EQUAL OBJECTIONS ARE RAISED AGAINST THE CANDIDATE. Al-

Translated by churchlatin.ai, a product of Boyne Archives

though, according to the ancient discipline of the Church, more attention was paid to the qualities of the mind than to bodily defects in the promotion of candidates, Canon 77 and 78 of the Apostles; Tomassin, *De vet. et nov. disciplin.*, part 2, chapter 78, numbers 2 to 6; nevertheless, over time, the Roman Pontiffs have considered those who suffer from some bodily defect to be unsuitable for the altar, canon 3, dist. 55, canon; illiterate, dist. 16. Such an irregularity seems to be derived from the Old Testament. Thus, the Lord spoke to Moses: "Speak to Aaron: 'A man of your seed, from among his generations, who has a blemish, shall not offer the bread of his God, nor shall he come near to the ministry thereof, if he is blind, or lame, or has a deformed nose, or a broken foot, or a maimed hand, or any other blemish.' " Leviticus, 21, verse 18. The reason why those with bodily defects are considered irregular in the New Testament is because they may either cause scandal to the faithful, or expose the sacred things to the danger of irreverence.

[*Latin ed. p. 428*]

428 They explain the dispensation from irregularity. Chapter: Concerning the priest, regarding a sick cleric. Since it is stated in the petition that Hyacinth suffers from a hump, which, although not serious, nevertheless provokes laughter, it is clearly evident that this defect does not exclude the true danger of exposing sacred things to ridicule; therefore, the grace seems to be to be denied. More so, because this concerns a promotion, for which, according to the practice of the Sacred Congregation, a dispensation is more difficult to grant. Fermo, regarding irregularities, May 24, 1823; Responses, regarding irregularities, May 6, 1775.

THOSE FAVORING THE PETITIONER:

On the contrary, it should be noted that those who are hunchbacked become irregular only when they are so to an extreme or deformed degree, Chapter: Hence, a hunchback, Dist. 4c. It is known that those who are physically impaired are not absolutely and simply irregular; but they become so either when the defect contains some deformity, or when it induces an inability to perform the functions of the sacred ministry. Chapter: Concerning the priest, I, regarding bodily impairments; Chapter: Thomas, in the same title; Ferrus, in the word "Irregularity," article I, number 12; La Croix, book 7, number 300; Laymann, book I, treatise 3, part 3, chapter 7. However, having seen the photographic image, and also having seen the person himself, who is one meter and fifty-three centimeters tall, Hyacinth does not appear to be hunchbacked. Moreover, even the Ordinary himself, whose judgment must be given the greatest weight, especially in this matter, according to Anacletus, regarding titles concerning bodily impairments, question 3, number 20, states: "The hump with which the afore-

Translated by churchlatin.ai, a product of Boyne Archives

mentioned young man is afflicted cannot be said to be extreme, nor to provoke laughter or inspire horror; and further, he continues: "Through an experiment conducted before the Master of Sacred Ceremonies, it is evident that the petitioner can perform all the actions of the Sacrifice without any deformity." These words are consistent with the testimony of the Master of Sacred Ceremonies himself, who states: "Hyacinth R. can perform all the actions of the Sacrifice without any deformity... and he has sufficient stature to perform the divine offices." "It is also pleasing to add (these are the words of the Bishop) that this young man comes from a very wealthy and devout family, and is of excellent character, and is endowed with remarkable virtue and piety... Therefore, there is good reason to hope that he will be ordained a priest."

[*Latin ed. p. 429*]

Dispensation from irregularity 429: "especially in the rural church, [it] devoutly serves the divine ministries, and diligently strives for the salvation of souls with fruit." These qualities of mind undoubtedly compensate for the defect of the body, and suggest that if, perhaps, someone is irregular, a dispensation should be granted to him in this regard. Therefore, having considered these matters, the Most Reverend Fathers were asked to decide what response should be given to such petitions. RESOLUTION. The Congregation of the Holy Council, on June 15, 1878, presented the following response: It is left to the judgment and conscience of the Bishop, with the faculty of granting a dispensation and enabling the petitioner for all orders, up to and including the priesthood, provided that he makes a promise. FROM THE ABOVE, IT IS UNDERSTOOD: I. All Canons should be examined, and it is for the Bishop to determine, in each particular case, what constitutes a notable or minor deformity, and whether, in this case and at this time, there is reason to fear danger or scandal from the admission to the Order. II. According to modern Church discipline, a bodily defect does not necessarily constitute an irregularity with regard to the reception of orders. In this determination, as Van. Espen states, par. 2, title 10, chapter 5, on irregularity, the Bishop considers the time, place, and the person, and his qualities. For it is certainly the case that a certain defect may be offensive in one place, and not in another; where such a defect is either more common or less noticed. The same is to be said of time. The person must also be carefully considered. It may happen that a bodily defect in one person would hinder the proper execution of the order, and not in another; and that the strength of other members may be able to compensate for the weakness or defect of another. For example, as Barbosa states, "if someone, although lacking visual acuity in the left eye, or 'canon,' and possesses such strength in the right eye that he can read the canon without a distorted facial expression, he is not irregular with regard to the reception of the order of the priesthood, or the celebration of Mass, after the order

Translated by churchlatin.ai, a product of Boyne Archives

has been received." Similarly, it is undoubtedly possible that there may be such outstanding qualities, whether in morals, or in doctrine and zeal, that a bodily defect, which might otherwise cause offense to the people, would not cause offense because of these outstanding qualities; or, if some offense were feared, it should be overlooked, considering the good that is hoped for from the Ordination and promotion of such a person. 2. The defect occurred without the fault of the person suffering it.

[*Latin ed. p. 430*]

430. Dispensations from irregularity shall not be granted unless the person either hinders the execution of the order, or bears such a deformity that, without danger or offense to the people, he cannot perform the functions of his office. III. Many canonists hold that those who are physically deformed, especially if the deformity exposes the sacred things to the danger of irreverence, should not be admitted. MARRIAGE. January 26th and July 20th, 1878. Summary of the case. On January 24th, 1875, John, who was 28 years old, and Mary, who had not yet reached her 20th year, were validly married according to the laws of Trent. Barely 15 or 20 days had passed since the marriage when the woman, deeply grieved, began to lament, weeping, and revealed to her mother that her marriage with her husband was not proceeding regularly. The mother's words could not lift the woman's spirits; therefore, at the end of March of the same year, she decided to confide her situation to her parish priest. "Most Reverend Spiritual Father," she said, "I beg you to save me; I cannot live like this any longer; my marriage with John cannot be valid; I find no peace." The parish priest, cautiously inquiring about the cause of her distress and dejection, responded with natural modesty: "I indeed intended to engage in the marital act, but my husband is of no use, he is nothing." The parish priest began to suspect John's impotence, and summoning him to himself, he inquired about his wife's complaints and tears. John himself indicated his impotence, asserting: "I am completely ignorant of what semen is, and I have never had or experienced anything of this kind." After considering this response, the parish priest sent the man to a doctor, so that remedies might be sought to arouse the dormant semen; and the remedies were applied. But when, after the application of the remedies, the marital act was again attempted...

[*Latin ed. p. 431*]

In the matter of Matrimonii 431, those involved attempted to proceed in this manner, but the man experienced the very impotence with which he had struggled from the beginning. Consequently, the woman left the husband's house towards the end of the year 1875; this caused great affliction and dejection of spirit, so that the parents, rightly, feared a loss of her mental faculties. She only began to raise her spirits when the parish priest declared to her that there was hope that her marriage would be

Translated by churchlatin.ai, a product of Boyne Archives

declared null and void by ecclesiastical authority. And indeed, after the proceedings were completed, the Episcopal Tribunal issued its judgment in August 1876: "The marriage between Ioannes and Mariam, due to the husband's antecedent and perpetually incurable impotence, is declared null and void; and, considering that a three-year trial, usually required in cases of impotence, is not necessarily to be observed, nor to be consulted, nor even to be permitted in the present case, We judge and declare." This matter was presented to the Sacred Congregation of the Council, from which the following opinions were requested from a theologian and a canonist, along with observations from the defender of the marriage office: a summary of all of which follows. Synoptic discussion. The theologian stated that, in his opinion, the marriage in question was null due to the antecedent impotence, and it is more likely to be a permanent condition, with which Ioannes struggles. However, with a reservation and for caution, due to what might happen in the future regarding Ioannes's impotence, it is advisable to consult with the Most Holy [Father] for a solution regarding a marriage that is valid but not consummated; and it is forbidden for the man to enter into other marriages without the consent of the Sacred Congregation. OPINION OF THE THEOLOGIAN. Citing Sánchez, /. 7, de matrim, disp., 92, n. 7, the theologian speaks of impotence which renders a marriage null. Thus, even if the man has the power to penetrate the woman's body, but lacks the power to inseminate within it, he is incapable of...

[*Latin ed. p. 432*]

432. Marriage requires the consummation of the marriage; for the value of marriage requires the union by which the spouses become one flesh. This is demonstrated by the Angelic Doctor in *Commentaria* on book 4 of the *Sentences*, Dist. 41, question 1, n. T, quaestiunculae 4, ad 2, where he teaches: "It must be said that a man and a woman become one flesh in carnal union through the commingling of seed; therefore, whatever someone may invade or violate concerning modesty, unless the commingling of seed follows, no affinity is contracted thereby." The same is confessed by Saint Alphonsus de Liguori, book 6, Tractate 6, on marriage, chapter 3, doubt 2, n. 1003. These things clearly indicate that the impotence of John is of such a nature that it renders the marriage entirely invalid and null. For, whatever may be the case regarding the erection, it is certain that he cannot sow seed in the woman's womb, since he does not know at all what male seed is, neither before nor after the marriage. Nothing manifests John's impotence more clearly than the fact that his genital parts are normal; for, as Cocchi states in his *Dissertatio physicoanatomica*, § 4: "Although the external configuration may be blameless, it does not exclude an internal defect in structure; nor does it prevent us from saying that the external configuration appears healthy, while the internal part is corrupted." Impotence must be present, and must precede, in order to invalidate a marriage. But impotence

Translated by churchlatin.ai, a product of Boyne Archives

is either natural or accidental. "When impotence is natural," says Saint Sanchez, line 2, disp. 203, n. 4, "it is presumed to have existed beforehand, and therefore the marriage is null." Furthermore, "natural things are permanent, and a quality that comes from nature is always presumed to be present; as Menochius proves, in *Praesumpta*, book 1, on presumptions, 14, n. 3." And Ferrari V. *Impedimenta*, n. 51, states: "If one spouse, within a short time, one or two months after the marriage contract, immediately begins to complain and object about the other's potency, it is presumed that it existed beforehand." In our case, it is clear that the impotence is natural, because it is caused by an intrinsic, morbid condition.

[*Latin ed. p. 433*]

Marriage 433 has occurred, and therefore, marriage preceded. But if John's impotence is said to be accidental, it is nevertheless presumed that marriage preceded, because the capable party, namely the woman, shortly after the celebration of the marriage, has become aware of the man's impotence. Such impotence is not permanent, it is deduced from the fact that John, according to the prescription of physicians, has used the most powerful remedies, but in vain, because it does not stem from any infirmity causing a weakening of the constitution: since the man is of sound constitution, according to the testimony of physicians, and because he is 29 years old and does not know the human seed, there is little hope that he will become capable. Therefore, the Theologian concluded that the marriage in question can be presumed not to be due to a prior and permanent impotence with which the man suffers. For, the Theologian says, it cannot be asserted with equal certainty of the permanence of the impotence (because it is internal), as it is established by the facts that the marriage preceded and has continued until the present: therefore, for caution, it is necessary to consult the Most Holy Father for the solution of a marriage that is not consummated. He says that no one should doubt that this is within the power of the Roman Pontiff, nor that there are reasons to carry it out, as a serious fear of future scandal is considered. He asks whether the impotence in this case is prior to the marriage, absolute, and permanent. The Doctors teach that marriage consists in the tradition of the power of the body for conjugal intercourse. This power cannot be transmitted by one who is absolutely impotent; the Angelic Doctor, in 4, D. 34, q. un., art. 2, says: "Although the carnal act of intercourse is not of the essence of marriage, nevertheless the power for this is of the essence of marriage; because by marriage, power is given to each spouse over the body of the other, with respect to carnal intercourse." If this impotence is permanent and precedes the marriage, so that a perfect carnal union is not obtained, it invalidates the marriage and renders it null from the

Translated by churchlatin.ai, a product of Boyne Archives

beginning. OPINION OF A CANONIST. Acts, vol. XI, page 129, 28.

[*Latin ed. p. 434*]

434. Impotence in marriage, among other proofs, is cited by Mascard, *De probatis*, vol. 2, cap. 88, n. 1, who states: "It is proven by the confession of both husband and wife, after they have persevered for two months in attempting carnal copulation and yet the husband has not been able to consummate the marriage carnally, as is understood by the author from chapter 1, concerning frigidity and malice..." In the case of the husband's impotence, both spouses confessed frankly; but the husband especially confessed this fact both judicially and extrajudicially. From the Sacred Roman Rota, in a case of dissolution of marriage before Ursino, reported by Cardinal De Luca, in *Ornamenta decisionum*, 2 and following pages, it is learned that the confession of both spouses, confirmed by oath, provides certainty regarding the impotence. Furthermore, the sworn testimony of witnesses on the part of the woman, so-called "seventh witnesses," is added, who with one voice confirm the depositions of the parties; and all undoubtedly testify to the probity, piety, and veracity of both. Reiffenst., book 4, *Decretum*, title 13, n. 43, *ibidem*, states: "Marriage can and should be annulled if both spouses swear that they have attempted to copulate, but have never been able to do so; and this is affirmed by seven relatives, under oath of credibility, swearing that they believe the spouses have sworn truthfully." It is not necessary to mention that, according to the testimony of physicians, the organs of generation, with regard to their external structure, are properly formed. For in order to prove the existence of a defect that renders a man impotent for copulation, it is not necessary for it to appear in an external abnormality of the body, but it is sufficient that it exists internally and is evident in its effects. Indeed, impotence can be twofold, namely, from an external and visible defect, and from an internal and invisible defect. In the case of an internal defect, the sacred Canons and Doctors have always held the judgment of physicians to be of no value. In the matter of a man accused by a woman of no external defect, but of an internal and invisible defect, by which he was rendered unfit to enter the woman's vagina, there is no doubt that reasons are lacking to obtain a dispensation from marriage, as long as the husband's impotence persists.

[*Latin ed. p. 435*]

Marriage 435 is perpetual, prior, absolute, and incurable. Furthermore, there is an insurmountable aversion of souls, and the danger of incontinence exists on the part of the woman, who is in the prime of her age. OBSERVATIONS OF THE DEFENDER OF THE MARRIAGE. The defender of the marriage judged that neither the rights of the sacrament nor the respect due to the judgments had been observed in the handling of this

Translated by churchlatin.ai, a product of Boyne Archives

matter; and that, because the proper order and religious observance necessary for declaring the marriage null were lacking; much less for obtaining a dispensation. Neither was incurable and perpetual impotence of the man proven; nor is a valid argument presented concerning the lack of consummation of the marriage; nor, finally, was a suitable and necessary period of time granted to the husband, in accordance with the observance of the sacred canons, to express his own suitability. Therefore, he maintained that neither for the nullity of the marriage in question, nor for the granting of a dispensation for it, should a judgment be rendered. For, he said, the process was completed, and a judgment was rendered by the Episcopal Court C, without the petition of the spouses having been written and signed by them, to be presented to the Supreme Pontiff. Which is entirely required by the merciful will of God: "We will and command that a suppliant petition be presented to Us or to the Roman Pontiff for the time being, in which a complete and accurate account of the entire matter is contained, and all the reasons are expressed therein which the petitioner believes may contribute to obtaining the requested dispensation." Furthermore, the Episcopal Court committed an even greater fault, when, in order to support the lack of consummation of the marriage, it did not admit, in any order or with any diligence, the examination of the bodies of both spouses. For, since John could not, from the conformation of his members, be proven to be impotent, the necessity arose spontaneously that the body of the woman be subjected to a diligent examination, in order to ascertain more fully her integrity, according to the instruction of the Sacred Congregation of 1840. From the report of the doctors, only testimony was obtained concerning the probable integrity of the woman's condition. Therefore, since all the aforementioned prescriptions of the Instructions were disregarded, and indeed...

[*Latin ed. p. 436*]

436. A petition concerning the nullity of a marriage, or concerning a dispensation from it, can be maintained, indeed, the proceedings cannot be pursued without first supplementing the procedural acts according to the norms of the sacred canons and ecclesiastical discipline. However, the value of the proceedings is fatally undermined by the negligence of the Defender of the Marriage appointed by the Episcopal Court. For, after having prepared arguments to protect the validity of the sacrament, having presented questions to both spouses, to both expert witnesses, and to witnesses, and after having diligently considered all matters, if, inexplicably, silence is observed in the progress of the cause, the Defender surrenders, while he ought to defend the validity of the marriage with voice and writing. But if these things are not sufficient, there are greater matters which affect the intrinsic merit of the cause, and which render the declaration of the nullity of the marriage, as well as the dispensation from it, unrea-

Translated by churchlatin.ai, a product of Boyne Archives

sonable and untimely. Indeed, is the impotence of the man incurable and perpetual, so that it constitutes an impediment that dissolves the marriage? Should it not, therefore, be declared invalid now? Is the marriage still consummated, so that it can be dissolved by a dispensation? These things should be firmly established; otherwise, in this doubt, the marriage must be considered valid, according to Sánchez, *De Matrimonio*, book 5, chapter 102, paragraph 8. "For if there is doubt whether the impotence is real, and whether the marriage has been consummated, in this doubt, one must presume in favor of the validity of the marriage: 'because possession is presumed in this doubt, when it is certain that a contract has been entered into, and only the impediment to it is doubted, which is never presumed.' And in truth, the truth of the impotence is excluded by one of the medical experts; who, describing the external appearance of the physical constitution of John, declared that no abnormality, and no organic defect, was present. From this declaration, since impotence is excluded, the very nature of the presumption arises, which favors the power of cohabitation, according to Sánchez, *De Matrimonio*, book 7, chapter 103, paragraph 5: "because nature itself produces a man capable, so that he who asserts that he is sometimes impotent, must bear the burden of proof; as it is the case when one contradicts a presumption."

[*Latin ed. p. 437*]

Concerning marriage, 437 the very nature of the matter dictates that, when presumption favors the natural quality, which is the power of cohabitation. Regarding the woman as well, expert judicial witnesses have stated that she cannot be called a virgin. Therefore, if it is dangerous to affirm the virginity of a woman, when positive signs of virginity still exist, it is all the more imprudent to assert it, while contrary testimonies of corruption are evident in the woman's body. However, even if it were the case, marriage has not yet been consummated between these spouses, due to the husband's insufficient suitability; therefore, it should not immediately proceed to the dissolution of the marriage, either through a declaration of nullity, or through an apostolic dispensation; until, at least, after a suitable period of time, the absolute incurability of the infirmity is demonstrated through treatment. To accomplish this, with prudent counsel, the Popes Celestine III and Innocent III decreed that a period of three years should be granted to attempt carnal intercourse. What treatment was prescribed by the physicians for the man in question is unknown, but it is known that this period did not exceed a year and a half. 1 With these things presupposed, the following two propositions were presented to resolve the doubts. I. Whether the opinion of the Episcopal Court C. should be confirmed or rejected in this case. And, to the extent that it is negative. II. Whether consultation with the Most Holy Father should be sought regarding a dispensation for the marriage, which is valid but not consummated, in this case. The

Translated by churchlatin.ai, a product of Boyne Archives

three-year trial is indeed prescribed by the laws of the Church; however, all theologians and canonists agree that such a trial should not only not be prescribed, but should be absolutely prohibited, as soon as the impotence of one or the other spouse is established. Thus, it can be said that the three-year trial in these judgments has fallen into disuse, and, as is commonly said, has been abandoned by the court.

[*Latin ed. p. 438*]

Marriage 438 RESOLUTION. The Sacred Congregation, having knowledge of the matter, decided on January 26, 1878, to respond as follows: To I. Affirmative to the first part, negative to the second. To II. As previously stated. The question, as is customary, was reposed at the general assembly on July 20, 1878, under the following formula of doubt: Whether one should adhere to or depart from the decisions in this case. The same Sacred Congregation responded: Adhere to the decisions. THEREFORE, THE FOLLOWING MAY BE GATHERED: I. A marriage tainted with the vice of nullity must be declared null, whenever it has been legally proven that the impotence of one of the parties preceded the celebration of the marriage. II. Although the carnal act of copulation is not of the essence of marriage; nevertheless, the power to perform this act pertains to the essence of marriage: because through marriage, each spouse gives the other power over his or her body, with respect to carnal copulation. III. It is not sufficient to prove the man's impotence by merely demonstrating that he can be restrained by the bonds of chastity; and that, for the sake of the value of marriage, or for the purpose that man and woman become one flesh in carnal copulation, the commingling of seed is required. IV. Nothing should be considered as constituting an impediment that cannot manifestly be proven to be due to the man's impotence by an abnormality of the genitals; and this is because such impotence often arises from a condition that appears perfectly healthy externally. V. In a case of doubt as to whether the impotence preceded or did not precede the marriage, it should be properly considered by Doctors to have preceded the marriage, if it arises from a natural cause: because natural conditions are always presumed to be present. VI. The man's impotence, in this case, was confirmed, apart from the sworn testimony of witnesses (seventh-hand testimony), by the confession of the man himself, who candidly stated: that he was completely ignorant of what semen was, and that he had never had or experienced anything of that kind.

[*Latin ed. p. 439*]

DISPENSATION FROM IRREGULARITY 439. DISPENSATION FROM IRREGULARITY. BY SUMMARY REQUEST. On July 20, 1878. The priest Joseph Peter P., of the Diocese of M., having been repeatedly afflicted by rheumatic pains, was forced for a large part of the year to remain in bed. However, after the crisis subsided, he is so weakened in his nerves that it is

Translated by churchlatin.ai, a product of Boyne Archives

impossible for him to stand on his feet throughout the entire celebration [of the Mass]: therefore, humbly beseeching the Supreme Pontiff, he requested that it be granted to him not to sit, but to lean against a higher seat, made like a stool, and placed behind him; which, as opportunity allows, could be covered with priestly garments. He noted that, through the kindness of the Pontiff, he already enjoys the privilege of a private oratory, and that only one boy, who performs the duties of a cleric, is present at the Mass. He then presented two reasons for obtaining this grace: 1. The consolation he would derive from celebrating Mass, while his infirmity prevents him from going to the Church and attending Mass, even on Sundays. 2. The help that would come to him from the stipend of the Masses; of which he is entirely in need for his sustenance. The Vicar General, acting for the Bishop who was hindered, on April 12th, sent a report from the Master of Ceremonies, stating that the Orator's prayers are worthy of being received with benevolence... that the Orator has nothing, and that the stipends of the Masses are entirely necessary for the support of so unhappy a life. Furthermore, the Master of Ceremonies, appointed by the Bishop, after describing the support to which the Orator would lean while performing the sacred rites, stated: "In my judgment, this manner of celebrating will not be less proper, and will allow all the prescribed ceremonies to be performed; except for genuflections, and the complete turn towards the people at the 'Orate fratres,' and also at the final blessing." But...

[*Latin ed. p. 440*]

440 Dispensations from irregularity might suffice through deep inclinations of the head, or through a slight bending of the right foot. The "Dominus vobiscum" and the responses near the Holy Sacrament might be performed in this manner, as prescribed by the rubric in the Missal. A synoptic consideration reveals that a true irregularity is present in this case, which is difficult to demonstrate with certainty, since from the facts presented thus far, it is clear that the head of the *Presbyter de clericis aegrotis* applies, which states that someone is considered universally irregular who cannot minister securely, either because of weakness, or not without scandal, because of deformity. In this particular case, the priest not only needs support to be able to celebrate Mass, but he is also unable to completely turn towards the people, and he can only give the sign of genuflection by bowing his head and slightly bending his right foot. From these defects, it seems evident that he is held back by the very irregularity that suggests a denial of grace, since in this lamentable state, celebrating the sacrifice would undoubtedly cause scandal and astonishment among the people. In such a case, the Supreme Pontiff rarely grants a dispensation when the person is physically infirm due to reverence for the Sacrament, as Reiffers, *t., tit. de corpore vitiat.*, n. 36 states; Pirhing agrees, n. 5, and Schmalzgr., n. 16 of the same title. However, when it concerns a situation that has already

Translated by churchlatin.ai, a product of Boyne Archives

occurred and not one that is being considered for promotion, and when the irregularity has arisen without fault, the strictness of the canons is often more easily relaxed, so that affliction may not be added to affliction, as taught by the resolutions of the Sacred Congregation of Rites in *Senogallien*, Dispensationes ab irregularitate, May 7, 1785, and *Portugallien* and *Lamecen*, August 14, 1824, and many others. There are also examples of such dispensations granted by the Sacred Congregation of Rites in similar and almost identical cases, as can be seen, especially in *Januarius*, Dispensationes, dated November 29, 1862, among the petitions presented. In that case, it concerned the parish priest, John Augustine Raggio, who, weakened by a condition of the tibia, was forced to...

[*Latin ed. p. 441*]

Regarding a dispensation from irregularity: 441. A priest who, due to an infirmity, is unable to approach the altar, or during the time of the sacrifice, is neither able to turn fully towards the people, nor to perform a profound genuflection, but only to indicate it, that is, by retracting his foot and inclining his head and shoulders, nevertheless, the Sacred Congregation of the Council responded: For the sake of the dispensation, provided he celebrates in a private oratory, or even in a church, at a time when it is less frequented by the people, and with the assistance of another priest, or at least a deacon: Furthermore, in this matter, the reason for scandal ceases, if the celebrant proclaims the grace of celebrating in a private oratory, where only a boy attends Mass as a cleric. The danger of profanation ceases, because, according to the testimony of the master of ceremonies, the act of imparting grace in this manner does not present anything that is less fitting, or that offers the danger of profanation. Having briefly explained these things, it will be for the Most Reverend Fathers to decide what course of action to take in this matter.

RESOLUTION. The Sacred Congregation of the Council, having knowledge of the case, responded on July 20, 1878: For the sake of the dispensation, at the discretion and conscience of the Bishop, in order to effect the celebration in a private oratory, until the illness worsens, provided he proclaims the words of consecration.

REGARDING THE RENUNCIATION AND REINTEGRATION.

1. On August 24, 1878. Summary of the case. A cleric, a beneficiary of the Basilica of the Vatican, burdened by debts, petitioned and obtained from the Roman Pontiff, the administrator of his goods, on April 6, 1853. Over time, he considered himself called to embrace the religious state; therefore, when he inquired about *Recollections*, the cause of his renunciation is

Translated by churchlatin.ai, a product of Boyne Archives

related, page 596, Volume IV.

[*Latin ed. p. 442*]

442 The renunciation and reintegration of [a certain person] among the Missionaries was permitted. However, when the superior became aware that this person was being pressured by debts, he encountered a difficulty. To alleviate this, on December 16, 1857, [the person] appealed to the Holy Father, explaining the need to retain the benefice for at least another six years, in order to satisfy creditors and provide for his mother's needs. Not obtaining the requested favor, [the person] did not lose heart; but he again requested, albeit in vain, that the Holy Father accept his resignation from the benefice, under certain conditions, in favor of the Priest A., who had been requested by the petitioner and his administrator to accept such a benefice. Meanwhile, on February 20, 1858, he wrote to the Very Reverend Archpriest of the Basilica of the Vatican, asking him to plead his case before the Holy Father, because the Missionaries, fearing the troubles of creditors, were refusing to accept him, unless he obtained this favor. On March 7, he sent another letter to the Very Reverend Archpriest, in which he gently informed him that he had voluntarily resigned from the benefice, and had requested two hundred scudi per year for six years to pay off his debts. From the records of the Basilica of the Vatican, we learn what subsequently occurred; for it is recorded that on March 20, 1868, [the person] resigned his benefice, requesting only a single grant of 1200 scudi. Furthermore, on March 23, 1858 (as is also recorded in the same records), it is stated that the Holy Father accepted the resignation of the benefice of [the person], under conditions established by the Holy See. After this, [the person] was assigned among the novices of the aforementioned Congregation, and the benefice was considered vacant, being granted to another priest on May 1, 1858. The newly appointed priest was burdened with the obligation to provide, each year, to the aforementioned [person] 80 scudi until the year 1864; however, this sum was to be deposited in the hands of the administrator. In September of the same year, 1858, [the person] returned to the world. In the year 1865, on April 6, a decree from the Holy See stated that...

[*Latin ed. p. 443*]

Nullitatis renuntiationis et reintegrationis 443, the Father, having been reinstated, was restored to his proper duties. However, from that time until the end of November 1877, he made no mention of the renunciation of the benefice which he had made; on the contrary, he later raised objections, claiming that, as one laboring under nullity, the renunciation was invalid, both because it was made during the time of the interdict, without the presence of guardians, and because it had been extorted by force. The aforementioned petitions were dismissed by the Eminent Archpriest, who stated that Placidus, after the renunciation of the benefice, had entered the

Translated by churchlatin.ai, a product of Boyne Archives

Congregation of Missionaries; from which he soon withdrew and obtained the parish of Saint Catherine in the city of C. He did not make a vow, but the Eminent Archpriest warned the petitioner that he was not worthy to have a place in the choir of the Basilica of the Vatican.

A concise summary of the arguments: Father P. presented the following arguments. In the Council of Trent, Session 23, chapter 6, concerning rules and vows, it is stipulated that any renunciation or obligation made within two months prior to taking vows should be considered null and void, even if confirmed by oath. However, canonists generally maintain that this provision applies also to the renunciation of benefices. Rigantius, in *reg. 46, Cancell. n. 16*, states: "A resignation of a benefice made by a novice is not valid, unless the form prescribed by the Council of Trent in Session 23, chapter 16, concerning rules, has been observed, and this provision applies also to the renunciation of benefices, as Fagnan affirms in the aforementioned chapter, Statute 18. Kocher here, n. ri and seqq. Paris, *de Résignât, lib. 3, quaest. 13 a n. 14...*." However, it seems clear that Father P. issued a renunciation of his benefice with the intention of entering the religious life. Therefore, if a renunciation of a benefice made by a novice, within two months prior to taking vows, is to be considered null and void, it would seem that the same should be said of one who, with the intention of embracing the religious state, issued a renunciation of the benefice he possessed shortly before assuming the habit.

Arguments in favor:

[*Latin ed. p. 444*]

444 The reasons for the nullity of a resignation and for reintegration are the same; therefore, the same legal principle must apply in both cases. And this is all the more so because, as the Advocate states, he did not freely renounce the benefice; for the Most Reverend Archpriest of the Basilica of the Vatican, with the consent of the Congregation for Missions, did not wish to accept him among the novices, unless he first relinquished the benefice. This is deduced from various conjectures, which indicate that the resignation was not free, and therefore cannot be upheld in any way; for, as Paris teaches, loc. cit., lib. 8, quaest. 2, no. 28, a resignation of a benefice is never, by law, presumed to be voluntary, since one should never presume a voluntary act of one's own will. To this must be added that, at the time when he renounced the benefice, he was under interdict; and therefore, without the formalities prescribed by law, he could not have validly relinquished the benefice. For those under interdict, just as with minors and wards, are forbidden, without the authority of guardians or curators, to enter into contracts, or to undertake any obligation whatsoever, such as a resignation or remission, *Institutes*, lib. i, tit. 21, on guardianship; lib. 3, tit. 20, § on wards, regarding stipends; lib. 5, D. de reg. iur., lib. 2, Code on guardianship. Similarly, caution is taken in the Gregorian Code, under §

Translated by churchlatin.ai, a product of Boyne Archives

32, where the formalities to be observed are also described, in order that the obligation of the interdict may be upheld. But since all the formalities required for a valid resignation were omitted, and since the act was also performed without a decree of a judge and without the presence of an economist, it would seem that it could not be upheld, and that the Advocate should be reintegrated into his benefice. It is of no avail to object that an economist was appointed to him to manage the affairs of the family, and not of the ecclesiastical benefice; for P. possessed nothing else besides the benefice, and he himself was the prefect of the chapter's treasury of the Basilica of the Vatican, and from the day the interdict was issued, the fruits of the benefice were transferred to the hands of the appointed economist. Nor does it seem that any advantage can be gained from his administration of the parish for two years, or more.

[*Latin ed. p. 445*]

Nullity of renunciation and reintegration by a prescription of 445 years. Not from the possession of the parish, because during that entire time, it remained under the bond of interdict. Not from prescription, because, as cited in § 32 of the Gregorian Code, interdicts appear to be equated with minors. Since, however, the cited Code does not determine anything regarding this, one must, from the same prescription, refer to common law, from which a period of 30 or 40 years is required to prescribe against a minor, after the age of majority, according to L. final Cod. And it is wrongly referred to prescription, if such a period has not elapsed, as the Rota in Caesena, in the matter of succession, on June 22, 1633, decision Merlino, § 13, states. It must also be observed that the formalities prescribed by the Gregorian Code are introduced for the substantial form of the contract, and therefore, after any lapse of time, a valid act cannot be made if it was initially defective. For that which is defective from the beginning, cannot be made valid by the passage of time / 7 L. de reg., iur. It is not confirmed by the passage of time, that which is not legally valid from the beginning, chapter 18, de reg. iur. in 6. Nor would the prescription be applicable from L. final Cod. if, having become a major, it is presumed that the minor ratified the act elicited during his minority, after the lapse of five years after reaching the age of majority. Indeed, Jovius states in his treatise on solemnities against minors, Gloss. 15, n. 44 seqq. "there," that it is not permissible to proceed with the prescription when the solemnity "was introduced by statute as the form of the contract, because "then it would be permissible to claim and allege nullity even after five years." And therefore, the final law of the Code, if a person has become a major, "should not have place in the terms of this statute," as Bardellort states in "Consil. 38, n. 23 and 42."

EQUAL AGAINST P. [ADDUCTAE FUERUNT]. It is noted, however, that a renunciation issued by the beneficiary, for legal purposes, and accepted by the legitimate superior, will cause the one who renounced to

Translated by churchlatin.ai, a product of Boyne Archives

regret what he has done. Chapter 2, de Renunc., chapter 6 of the same title, chapter 3, de restit. Spoliat. Devoti Instit. Canon., book i, title 8, section i, § j. But if the dismissal of the benefice was spontaneous and free, it is easily obtained, as can be seen from the epistle...

[*Latin ed. p. 446*]

446 Regarding the renunciation and reintegration of the habit of the aforementioned Father, to the Very Reverend Archpriest of media, and also the Pro-Datary, and from the agreements that took place between the Very Reverend Archpriest and the aforementioned Father, so that, having relinquished the benefit, he might obtain something from the generosity of the Pontiff, in order to remit the debt. Finally, from the petition presented to this Sacred Congregation on November 12, 1877, in which, among other things, it is written, "I came with the intention of resigning my benefice, before the Apostolic Datary, under certain conditions." And further on, he recounts that before taking religious habit, he presented himself to the Datary, and issued the act of renunciation before an official, who... had previously warned him three times about the gravity of the act. Having carefully considered all of this, the idea of coercion is refuted; moreover, coercion, like a crime, ought to be demonstrated with solid arguments, as Barbosa states in *Collect*, book 1, Decretals, chapter 1, Cap. relating to those things which are caused by force and fear, I, i, ff. pro socio. Nor was any coercion imposed by the Fathers of the Mission, who requested nothing from the aforementioned Father other than, before he received the religious habit in media, to remit the debt, and to avoid troubles from the religious house in which he would live. It would be blasphemous to doubt that this renunciation was made before a legitimate superior and accepted by him; for it is recorded in the diary of the Basilica of Vaticanae as if it were a factual account. Therefore, since there is no longer any doubt about the voluntary relinquishment of the benefice, and about the acceptance by the legitimate superior, the aforementioned Father should be dismissed by the same decree by which Alexander III dismissed Paul of clericum, who was opposing his own renunciation, chapter 3, on resistance and deprivation. "We command that, if it should appear to you that the aforementioned Paul, without any fear or coercion, but spontaneously... has thus renounced the Church, you impose perpetual silence upon him concerning this matter." Nor can anything be obtained in favor of the aforementioned Father from the Council of Trent, Session 23, chapter 16, on regulations, because there it is a matter of novices; but the aforementioned Father was not a novice at the time when he relinquished the benefice. But even from this, he could not be helped.

[*Latin ed. p. 447*]

Regarding the denial of validity and the restoration: 447. It is alleged

Translated by churchlatin.ai, a product of Boyne Archives

that a benefit was relinquished without the necessary formalities during the period of interdict. Firstly, nowhere in canon law is there a decree that prohibits, under penalty of nullity, the sending of a notification of relinquishment of a benefit held by one who is under interdict, without the proper formalities. Therefore, since in matters of prohibition, that which is not expressly prohibited is considered permitted, according to the disposition in Text. in leg. Necnon, § Quodvis ff. ex quib. caus. maior. Furthermore, the Gloss in Cap. Ex litteris de Jurepatronatus and in Cap. Inter corporalia de translatione Episcoporum suggests that the relinquishment should be upheld. Secondly, the plaintiff, P., merely asserts, but does not prove, that he relinquished the benefit without the necessary formalities, while, on the contrary, it is established that he intended to resign the benefit with the favor of the priest, A., whom he had already consulted, both as a suppliant and as an administrator. Therefore, a very strong presumption arises that everything proceeded correctly, and this presumption must be upheld, unless the contrary is proven, according to L. Nuptura 38 ff. de iur. dot. L. non est 33 gloss, praesumpt. ff. de eo quod met. caus. Thirdly, even granting that the formalities required by law were necessary for the validity of the act, and that it is clearly established by documents that these formalities were not observed in the past, the plaintiff's insistence would still be to be rejected, due to the useless expenditure of time; for more than 12 years have elapsed from the time of the restoration until the time of the presentation of the appeal, according to L. ult. Cod. de tempore in integ. r est. L. 2 de min. 23 ann., cap. i, de in integ. r est. in 6. Furthermore, according to the Latin Elementary Jurisprudence, book 2, title 6, § 10, n. 4, « there ». « Also, the restoration « in integrum » expires after four years, even if it is due to minors or the Church, unless « a reasonable cause suggests that it should be granted even after four years »; or the plaintiff brings an action for nullity, and five years after the completed restoration, the prescription has occurred, according to L. 3 Cod. Si maior factus « ibi » « we decree that if, after completing his minority, that is, after twenty-five years, nothing « has been obtained regarding such alienation or supposition, then he who made it, or... conquestus...

[*Latin ed. p. 448*]

448. Concerning the nullity of a renunciation and reintegration: "His heir, it is not possible to retract [the renunciation], not being able to do so because of the termination of the decree, but must hold it as if it had been a legitimate decree from the beginning, by which the property was alienated or presumed." Furthermore, it must not be forgotten that this renunciation was made before the Pontiff, who is presumed to know the laws, and the Sacred Rota, having examined the matter, in Decree 143, number 1, knew the situation perfectly well, since both the renunciation and the order to pay the sum of 80 scudi per year for six years from the new beneficiary to the

Translated by churchlatin.ai, a product of Boyne Archives

treasurer were issued by him. And therefore, so that nothing may be taken away from that supreme authority, or so that anything may be denied to its will, according to the text in the chapter on prebends, there remains nothing to do but to receive it with due obedience, and for the judges to religiously safeguard what has been done by the Pontiff. It must also be noted that P. accepted a parochial benefice after leaving the religious order; therefore, by accepting and possessing a second benefice, he was incompatible for two years, and the first benefice must be considered, by its own right, to have been vacant. *Tridentinum, Session 7, chapter 4, on reforms*. Does he benefit from the interdict? Because it is not likely that this occurred at that time, and because the law does not include this case; and where the law does not distinguish, neither should we. *L. Sciendum ff.*. These premises having been presented on both sides, the following question was proposed: Whether the renunciation of the choral benefice is valid, so that there is room for reintegration in favor of the Priest P. in this case.

RESOLUTION: The Sacred Congregation, after deliberation, gave the following response on August 24, 1878: Negatively in all respects.

FROM WHICH WE GATHER: I. A renunciation that has been issued according to legal procedures, and accepted by the legitimate superior, cannot be retracted, and the one who renounces the benefice does so in vain, regretting the act.

[*Latin ed. p. 449*]

I. Regarding the declaration of nullity and reintegration, it is clear to anyone who has read the history of the events that the declaration made by the priest was free from coercion, and should be considered spontaneous and accepted by his legitimate superior.

II. Nowhere in canon law has it been decreed that a benefit should be declared invalid simply because the priest sent a messenger, disregarding the formalities of the law; therefore, since it is not expressly prohibited, it should be considered permissible.

III. It is to be presumed that the resignation was entirely in accordance with the law, and that, in addition to the priest's freedom, the consent of the economist, who had been informed of this resignation, was also obtained in some way.

IV. The acts, due to the disregard of formalities, are to be validated, so that the rehabilitated priest may have the opportunity to pass the required time without recourse; thus, he is no longer permitted to request restitution, nor to bring an action for nullity.

V. A declaration of renunciation made before the Holy Pontiff, and accepted by him, is to be considered valid in any case, because the Pontiff is presumed to know the laws and to have them in his heart.

VI. By the law itself, the benefit of that cleric is immediately vacated

Translated by churchlatin.ai, a product of Boyne Archives

who has presumed to receive or to retain simultaneously a benefit that is incompatible according to ecclesiastical law; because this is contrary to the Holy Canons, and especially to the Constitution of Innocent III, *De multa*, as well as to the Council of Trent, Session 7, chapter 4, concerning reforms.

VII. It should be considered that the benefit of the Vatican Basilica was, if it is not yet so, immediately vacated as soon as the priest accepted the parochial benefit, which is incompatible with a choral benefit held elsewhere. Acts, volume XI, page CXXIX, 29.

[*Latin ed. p. 450*]

450. REINTEGRATIONIS VECTIGALIUM. Die 14 septembris 1878. Compendium facti. Per regio decretum anno 1788, certa Abbatia suppressa est; eiusdemque bona atque iura addicta sunt Capitulo Ecclesiae Cathedralis C. Ad hanc conditionem tamen addita est, ut pars bonorum dictae Abbatiae tribueretur quatuor paroeciis eidem Capitulo commendatis, ad eorumdem paroeciarum congruam constituendam. Capitulum, accepta dismembratio altera ex illis Paroeciis sub titulo S. Firminae, quaedam praedia, rustica et urbana, pro congruo parochi alimonia, ultro eidem Ecclesiae cessit; et insimul spopondit se quotannis Parocho pro tempore fore soluturum scutata 45 ad ipsam congruam supplendam. Praeterea, solemni stipulatione cautum est, ut Capitulum Parocho congruam parochialem a quovis onere ordinario vel extraordinario immunem redderet. Ita ut (ut in stipulatione cautum est), assignata congrua per reditus bonorum cessorum, et per 45 scutata; immunis et libera reddatur a quibuslibet oneribus et vectigalibus. Actualis Parochus dictae Ecclesiae, usque adhuc tributa omnia solvit, quibus Gubernium italicum onerare potuit fideles subditos. Tandem, inopia coactus, postulavit a Capitulo ut, ad tramitem conventionis anni 1788, sublevaretur ab oneribus, et reintegraretur quoad vectigalia, Regio Fisco a se persoluta. Cui Capitulum respondit edicens: se tantum obnoxium fore restitutioni vectigalium, quibus praedia subiugata sunt. Parochus tunc, ad sua protuenda iura, sacram adivit Concilii Congregationem, enarrans: se laesum fuisse ex vectigalium indebita solutione, cum magna Canonicorum utilitate. Quaesivit inde sollicitum remedium, atque redintegrationem, ab exordio usque ad hoc tempus, pecuniae solutae pro vectigalibus.

[*Latin ed. p. 451*]

Regarding the restoration of taxes: 451 guilders, commonly called "dead hand" taxes, of movable property amounting to 4.5 scudi, and of buildings, specifically the parochial house, excluding personal taxes, to the extent that it may please the Fathers. The Bishop, being consulted, judged that nothing should be restored concerning the past; but with regard to the future, he advised that the Chapter should provide a suitable sum to the parish priest, free from burdens, as he requested. However, the proposal for reconcilia-

Translated by churchlatin.ai, a product of Boyne Archives

tion with the canons was rejected, and the dispute was brought before the full assembly. A summary of the discussion. In the convention of 1788, the Chapter was burdened only with a double obligation in favor of the parish priest; namely, to pay the tax that arises from ordinary and extraordinary property taxes, and to repay 45 scudi, for the purpose of providing a suitable sum. No other taxes, commonly called "dead hand" taxes, of movable property, or of buildings, can be added to these; for it is forbidden to extend agreements beyond those things which are expressly stipulated, *leg. quidquid adstringendae ff. de verb. oblig.* *leg. si ita stipulât, ff. de verb. obligat.* THE RIGHTS OF THE CHAPTER. Such a disposition of rights is particularly applicable in the present case; for the matter concerns taxes, which, being odious, must be strictly understood in the agreements, and there is no room for extending them from case to case. See Rocca, cap. 77, n. 8: "A tax, because it is odious, must be understood as strictly as possible, only in the case in which the wording of the imposition precisely speaks, and not extended further, even if there is an identity or a greater reason." *B ar toi., in I. si pupillus, 2 1 , num. 3 ff. ad leg. Falcid., in I. Contractus, 16, sub n. 3 et 6 Cod. de fid. instr um.* Therefore, nothing seems more in accordance with the convention than that the Chapter should be obligated to pay no other tax than those pertaining to property taxes. Therefore, it is in vain to invoke the article of the convention where it is stated that the parish priest must be exempt from any...

[*Latin ed. p. 452*]

452. Regarding the burden of restoring tithes, whether by expense or imposition, the words must be understood literally; but it must always be considered with what intention something was written. Therefore, in any matter, one must diligently examine what has been done, as is stated in the text of the law, "Semper in stipulationibus." Gudelin, in Syntagen., reg. iur. cap. 2, nos. 4 and 5, rightly observes this in matters of law. Indeed, a contract receives its form and determination from the will of the contracting parties. It is certainly true that the will of the contracting parties cannot extend to unknown things; as the text in I. Patres states, "de condici, et demonstrat," and I. Cuius states, "ad Municip. Valasc. co?isultat. i/ç, n. 3." However, the tithes about which we are speaking could not have been known at the time the agreement was made; therefore, it must be understood that it refers only to land tithes. And rightly so, because it can be said that the contracting parties considered and agreed upon only those tithes for which there was a present opportunity and necessity; for only for properties listed under the name of the parish in the census records were the tithes to be paid by the parish priest. The chapter exempts the parish priest from the burden of these tithes; hence, it is clear that the contracting parties had in mind only the land tithes. Furthermore, it is a principle of law that, in order to determine the validity of any agreement

Translated by churchlatin.ai, a product of Boyne Archives

or stipulation, the entire context of the agreement must be considered, as stated in Rota, in Narnien., Dotis et lucri, February 12, 1816, § 13, cited by Piccolomini. Indeed, the entire context of the agreement confirms that the contracting parties considered only the land tithes. Not only from the context of the agreement, but also from the very nature of the tithes, it is clear that the parish priest is not subject to the disputed tithes. For from the very words of the agreement, it is clear that the tax in question refers to the "di manomorta," which concerns the moral obligation, or, in our case, the parochial obligation, which is not a tithe. Therefore, this tax is to be borne by the one who has the right to the parochial benefit, or the parish priest himself; and in his favor, the chapter, through this agreement, has especially proclaimed this right. Furthermore, the chapter maintains that the tithe for the church building is solely for the parish priest. For the parochial house is part of the parochial endowment.

[*Latin ed. p. 453*]

The reimbursement of dues amounting to 453 is not due; under this name are understood only the fruits or revenues which are owed to the Parish Priest; among these, the parochial house certainly cannot be included. And therefore, the taxes imposed on the parochial house should only be repaid by the owner, who is the Parish Priest, in whose favor the Chapter ceded the property. It is also an equally futile endeavor for the Parish Priest to demand the reimbursement of dues amounting to a sum equivalent to 45 scudi, which are considered movable property. This is for two reasons. Firstly, because the Chapter annually transfers the ownership of said sum to the Parish Priest. Secondly, because on the same sum, the aforementioned tax on movable property and other taxes, the same Chapter pays; since the capitular revenues, from which these are taken, are subject to the same taxes; and because it is considered a matter of extreme hardship to pay a double tax for the same thing, as the Rota, in Assisii, *Executionis manus regiae*, May 20, 183c, cor. Marini, § 4, has always held, and which should never be tolerated, *Leg. Interdum*, 8, as also the gloss on *Dig. de public, et vectig.*, *Const. Consil.* 455, no. 3, *lib. i*; it is therefore clear that the tax on movable property must be paid by the Parish Priest, and not by the Chapter. And in truth, the Canons say, that when 45 scudi have been paid, they pass from the property of the Chapter to the property of the Parish Priest; who is entirely obligated to repay all taxes by virtue of this possession. It would be exceedingly burdensome for the Chapter if, after having provided the Parish Priest with an increase in dues, it should perpetually be obligated to maintain the full value of that sum. Furthermore, it must not be overlooked that the same Chapter pays various taxes on the land from which the 45 scudi are taken, and despite these, it pays the same sum to the Parish Priest, free from any reduction. Moreover, even without this stipulation, the Parish Priest's

Translated by churchlatin.ai, a product of Boyne Archives

request is manifestly unjust; because the actual dues exceed the limits of the dues defined by civil law, which are 80 scudi annually. Therefore, the Parish Priest appears to be seeking the reimbursement of dues rather for the purpose of obtaining a profit, than to avoid a loss; therefore, there is no basis for this reimbursement, and the claim for the return of dues is invalid.

[*Latin ed. p. 454*]

454. Concerning the restoration of parish revenues, the PARISH PRIEST. It would seem that the Parish Priest is justly entitled to demand the restoration of revenues from the Chapter, except for taxes on families, in accordance with the aforementioned agreement of the year 1788. For in that agreement, it was stipulated: "A sum assigned [congrua] from the revenues of the described properties, and from the addition of 45 scudi, shall be free and exempt from any charge, expense, or imposition." These words are so unrestrained and so comprehensive that they leave no burden under which the parish congrua should not be exempt. Furthermore, this conclusion is also supported by a law promulgated by the Holy Congregation of the Holy Office in July 1816, which stipulates that in matters of pensions, all charges related to the payment of pensions must be converted into a burden for the party obligated to provide the pension, so that the pension payment is free and exempt from any charge whatsoever. Indeed, that unrestrained clause "free from any charge whatsoever" by itself refunds to the Chapter any tax or charge that might, at any time, burden the said congrua. For general words are to be understood generally, and they admit of no limitation; for the genus contains the species, and what is expressed generally is understood to be said of the species and the individual. But since the exemption from impositions was conceived in the most extensive and powerful terms in favor of the Parish Priest, this also includes the disputed revenues, since such a general exemption extends to unknown and unforeseen matters. Otherwise, the words of the agreement would be entirely devoid of meaning, and it would not be apparent for what purpose they were written, if the disputed revenues were to be excluded; whereas, on the contrary, it has been established in contracts and obligations that no word should be considered superfluous or without effect, *Rota*, in recent decisions, 337, n. 1, part 2, *cor.*; *Motines*, decisions 2çç, n. 4, *cor.*; *Ollivat*. The exemption, which the Parish Priest obtained from the Chapter in the year 1788, did not affect only rural properties, but also the parochial house, and the supplement to the congrua was provided in...

[*Latin ed. p. 455*]

The restoration of ecclesiastical revenues, section 455, title 4, contains; since the exemption extended to the entire appropriate amount, as also noted by the current Parish Priest. And indeed, it must be held as valid, not

Translated by churchlatin.ai, a product of Boyne Archives

only what was expressly stipulated, but also what clearly and necessarily follows from the express laws: 6, ff. on contracts of sale; 219, ff. on the meaning of words; the law: The Praetor says § 1, ff. on new obligations. Indeed, the exemption of newly assessed revenues necessarily follows from the express exemption from all burdens on the parochial appropriate amount; because both the taxes on rural properties and the urban burdens, as well as the properties and pecuniary payments that burden them, diminish the very appropriate amount. This is what is implied by the final cause, which, as is known, gives light to each contract, as the Rota, in Romana, or Ostia, of the Association, January 23, 1819, decision Odescalchi: namely, that the Parish Priest should enjoy the assigned appropriate amount, without any diminution of revenues, burdens, or expenses; in which the purpose of the agreement is contained. But new taxes, which in various ways burden the Parish Priest, greatly diminish the revenues, therefore they must be paid by the Chapter. But, in addition to the agreement made in the stipulation of the year 1788, which is most favorable to the Parish Priest, both by the equity itself, by which he receives the appropriate amount from those who have obtained the goods of the suppressed Abbey, in order to benefit the parishes; and also by the very fact that the appropriate amount for the parish is diminished due to disputed revenues, it suggests that, through the exemption of these revenues, provision should be made for the safety of the same appropriate amount. For there is nothing more certain than that a Rector of a Church, exercising care for souls and administering the Sacraments to the people, is due an appropriate portion, which is spent on sustenance, as in Clement, I, and in the chapter Extirpandae, § Qui vero. This appropriate amount should be such that the Parish Priest, who labors in the Lord's vineyard by ministering spiritually to the people, may live comfortably, without worrying about obtaining his livelihood elsewhere, as the Rota,

[*Latin ed. p. 456*]

456 Regarding the restoration of ecclesiastical revenues. Millino, decree 84, paragraph 4, and in the recent decree 347, paragraph 7, part 1, 3; lest he neglect his proper office due to poverty, and lest the people entrusted to him, whom he ought to restrain, become a source of mockery, and lest he be compelled to perform actions unworthy of his rank, Lotter, on ecclesiastical matters, book 2, question 12, paragraph 23. Therefore, the Doctors unanimously declare that a parish priest who has suffered a diminution in his parochial revenues can take action to supplement them against those who possess the property of the parish, Lotter, on ecclesiastical matters, book 2, question 12, paragraphs 27 and following. However, the current parish priest demonstrates through various burdens that he has suffered a proper and proportionate reduction of 20 scudi; and that no one is bound by a more urgent obligation to provide for his compensation than the Chapter of

Translated by churchlatin.ai, a product of Boyne Archives

the Cathedral, because it possesses the property of the parish. Finally, the parish priest postponed the objections raised by the Chapter. The Chapter stated: "Payment does not change ownership; therefore, the 45 scudi, which are the property of the Chapter and for which it collects a tax, pass into the ownership of the parish priest, who is obligated to pay the tax; and the Chapter is not obligated to pursue the matter further after it has been paid." To which the parish priest responded: "Payment does not change ownership if that is understood according to the agreements of the contract; but the 45 scudi, while remaining with the Chapter, are not in its ownership, but the Chapter retains them as a deposit, to be delivered to the parish priest at the appropriate time; it is contrary to truth for the Chapter to pay taxes for the parish priest, but rather to pay the same taxes for its own annual administration; it is not required that the Chapter pursue the recovery of the 45 scudi for the parish priest, once it has delivered them; but it is required that the Chapter maintain the aforementioned sum free from taxes; otherwise, the parish priest will not receive the 45 scudi according to the current regulations." After these explanations, the matter was referred to the learned authorities to decide how it should be resolved.

[*Latin ed. p. 457*]

Regarding the Reintegration of Tithes: 457. Question. Whether there is a place for the reintegration of tithes that have been completely paid, as in the case of those that are being paid.

Resolution. The Holy Council of [Trent], under the date of September 14, 1878, after considering the matter, judged it fitting to respond: Affirmative, with regard to tithes that are being paid, except for purely personal taxes (commonly called "di famiglia"), whereas, concerning tithes that have been completely paid, it is fitting to agree.

FROM WHICH THE FOLLOWING ARE DERIVED:

I. In order that the force and efficacy of agreements may be more closely attained, it should not be considered objectionable for such agreements to have their final cause; which, as jurisprudence teaches, often provides light to each contract.

II. The purpose of the agreement in question was that the parish priest might enjoy a suitable provision, without any diminution, so that the parish priest himself would not be burdened.

III. It is fitting that pastors should receive such a provision, so that they may live comfortably; so that, while ministering to the people spiritually in the Lord's vineyard, they may not be compelled by poverty, or be forced to neglect such sacred duties, or to undertake such things as may give offense to the people to whom they are entrusted.

IV. Agreements, conceived in the most extensive and unrestrained terms,

Translated by churchlatin.ai, a product of Boyne Archives

are, by the very disposition of the law, to be understood in such a way that they are not limited by any boundary; because general words are to be understood generally; and that which is expressed generally is to be understood as said of species and of individuals.

V. In the matter at hand, the agreement was stipulated between the parish priest and the Chapter in such broad terms regarding the exemption from burdens, in favor of the parish priest, that no burden should remain by which the parish priest should not be relieved by the Chapter.

VI. From the law 6 Digest., concerning contracts of purchase, sale, and lease, it is to be held as valid not only that which has been expressly stipulated, but also that which clearly and necessarily follows from the express stipulations.

[*Latin ed. p. 458*]

458. OF ABSOLUTION AND DISPENSATION FROM IRREGULARITY. BY MEANS OF SUMMARY PRAYERS. On January 25, 1879. The Most Reverend Bishop C. presented prayers to the Most Holy Prince, in which he expressed his joy, and reported as follows: The cleric Frederick A., an acolyte, having been justly removed from the sacred orders, rashly, under the influence of unsound counsel, forged the letters of his Ordinary, and dared to receive the Diaconate from a foreign Bishop on February 23, 1864. Subsequently, through a heartfelt petition, having repented of his actions, he obtained absolution from the Holy Penitentiary from ecclesiastical censures and penalties, but the irregularity remained with him, both concerning the orders he had received and those he might receive in the future. Now, this cleric, having behaved properly for 17 years in the service of the parish church, seems worthy to be promoted to other sacred orders. Therefore, the Bishop requested from the Holy See the faculty both to promote him to other orders and to habilitate him to exercise the orders he had already received.

Synopsis of the matter. From Chapter I, paragraphs 2 and 3, concerning him who secretly receives orders: He who secretly receives an order cannot minister in the orders thus received, nor can he advance to receiving other orders; but if the ordainer had extended the term of excommunication against those who secretly approach before the ordination, only the Pope can grant a dispensation. It should also be noted that Doctors commonly say that a promotion obtained secretly incurs an irregularity which is more difficult to dispense with if that term had been extended: thus Suarez, disputation 42.

[*Latin ed. p. 459*]

Concerning absolution and dispensation from irregularities of 459 concerning censures, section 3, number 3, Maiolus, book 4, chapter 8, and others throughout. These penalties appear to be more severely imposed

Translated by churchlatin.ai, a product of Boyne Archives

against those who promote a false dismissal, for the crime of falsehood is incurred; indeed, according to the more common opinion, if this crime is notorious by law or by fact, the penalty of infamy is incurred without judgment, because it is a crime worthy of deposition, Sayr, book 1, chapter 12, number 3 and 12; Garz., paragraph n, chapter 3, number no. Today, however, according to the Council of Trent, Session 6, chapter 3, and Session 23, chapter 8, it is certain that a cleric ordained by a foreign bishop without the express permission of his own ordinary is suspended from the execution of his orders by law itself, as long as it appears expedient to his own ordinary; and he becomes irregular for receiving other orders. These penalties have been carefully established to prevent any possibility of fraud and deceit in a matter of such grave importance. Furthermore, if anyone is found to have neglected some order in his advancement, he is said to have been ordained "per saltum" (by leaping), and remains suspended from the order he received. He can be absolved from this suspension by the bishop, as often as he has not ministered in the order he received; but if he has ministered in it, he has incurred an irregularity, from which the bishop can dispense if it is still hidden; if it is notorious, the Supreme Pontiff must be consulted, chapter 1, concerning clerics promoted "per saltum," Council of Trent, Session 23, chapter 14; Clement VIII, Constitution Romanum Pontificem 1 2 1. However, the omitted order must always be received, and only when the case is hidden can the Major Penitentiary grant permission for it to be received secretly by any prelate, even outside the proper times, without observing the intervals and without dismissals, Benedict XIV, Constitution Pastor Bonus, § 18. Considering all of this, since Frederick not only secretly received the order of deacon with false dismissals, but also "per saltum," it seemed that the requested dispensation should be denied, for so many crimes have been committed, and so many censures neglected in this single act, that they suggest that it would not be easy to relax them, nor to grant the bishop's wishes. On the other hand, many years have passed since the order was improperly received, and signs of humility and true repentance are seen in Frederick.

[*Latin ed. p. 460*]

460 It appears that the cleric has received absolution and dispensation from irregularity, and therefore, having repaired his conduct by a bad example and scandal, he did not hesitate to present humble petitions to the Congregation of Holy Councils, and all these things taken together suggest that the rigor of the canons should be relaxed. Nor did the Holy Congregation of Councils feel otherwise in the case of Aglonen and Tursien, on September 23, 1844, when a subdeacon, L., in the year 1836, had been promoted to the order of priesthood by false dismissal letters from the Capitular Vicar, and without legitimate age. Having requested absolution from censures and dispensation from irregularity, and rehabilitation, the Sacred

Translated by churchlatin.ai, a product of Boyne Archives

Congregation, on May 5, 1841, first wrote that the petitioner should show true signs of penance and constant amendment. Then, the petitioner, of his own accord, devoted himself to spiritual exercises for three months; and having presented a laudable testimony of his changed life, and of his constant concern for a good reputation, he renewed his petitions to the Sacred Congregation, which finally, on September 23, 1844, gave the following decree: "After the spiritual exercises, 'in a place and at a time determined by the Bishop, it should be consulted 'with the Most Holy Father for the granting of absolution from censures and other penalties 'incurred, and for dispensation and rehabilitation from 'irregularity, in whatever way it may have been 'contracted, at the discretion and conscience of the Bishop, 'who must first satisfy himself of the petitioner's 'sufficient knowledge, and even outside the times 'established by law, on a Sunday, if necessary, 'to make up for what has been omitted, concerning 'the order of the diaconate." Therefore, considering these things, it did not seem that Frederick should be denied the benefit of absolution in the external forum from censures and other penalties incurred, and of dispensation from irregularity, so that, having previously received the order of subdeacon, he might be able to advance to the priesthood. After these premises, it was left to the prudent judgment of the Most Eminent and Reverend Fathers to decide what response should be given to the petitions for the cleric. The Sacred Congregation, having considered all things, responded on January 25, 1879: "For the grace requested, according to the petition, let the word be spoken with the Most Holy Father. RESOLUTION."

[*Latin ed. p. 461*]

FROM THE HOLY CONGREGATION OF THE INDEX, DECREE. Tuesday, the 3rd day of February, 1879. The Holy Congregation of the Most Eminent and Most Reverend Cardinals of the Holy Roman Church, by order of the MOST HOLY LORD OUR POPE LEO XIII and the Holy Apostolic See, concerning the condemnation, proscription, expurgation, and permission of books of false doctrine, in the entire Christian Republic, having met in the Apostolic Palace at the Vatican on the 1st day of February, 1879, condemned and condemns, proscribes and proscribes, or orders that the following works be referred to the Index of Prohibited Books, which are:

Ardigò, Robert. *La formazione naturale nel fatto del sistema Solare*. Mantua, Viviano Guastalla, 1877.

Picco, Modesto, professor. *Prime Nozioni intorno ai Doveri dell'Uomo, e del Cittadino con alcuni cenni circa i diritti che questi devono derivare ad uso delle scuole elementari*. Royal Printing House of Turin, 1878. "The author commendably submitted and disapproved of the work."

Mancini, Luigi, professor of Italian literature at the Nolfi Lyceum of Fano. *Dio è Vivo. Lettera ad un amico*. Fano, at the printing house of V. Pasqualis, successor, 1878.

Translated by churchlatin.ai, a product of Boyne Archives

Dittes, Friedrich, Doctor, Director of the Pedagogium in Vienna. *Lehrbuch der Psychologie*. Leipzig, 1876. "In Latin: *Institutiones Psycologiae*. Leipzig, 1876. This work is condemned according to Rule II of the Tridentine Index."

Causes intérieures de la faiblesse extérieure de l'Eglise en 1870. Fifth Part, 3 volumes. Rome, Tiberina Printing House, 1878.

[*Latin ed. p. 462*]

Decree 462. Havet, Ernest. *Le Christianisme et ses origines*, Paris. Michel Calmann Lévy, editors, 1873, 1878. 3 volumes. Therefore, no one, of whatever rank and condition, should dare to publish the aforementioned works, or to read or retain them, in any place and in any language, but rather they are obligated to deliver them to the Ordinaries of the places, or to the Inquisitors of heretical perversity, under the penalties indicated in the Index of Prohibited Books. These matters, having been related to Our Most Holy Lord Pope Leo XIII by me, the undersigned S.I.C. from the Secret Archives, His Holiness approved the Decree and ordered it to be promulgated. In witness whereof, etc. Given in Rome on the 4th of February, 1879. Fr. Thomas Maria Card. Martinelli, Prefect. L. © S. Fr. Hieronymus Pius Saccheri, Ord. Praed. S. Ind., Congregation of the Secret Archives. On the 22nd of February, 1879, I, the undersigned, Master Cursor, testify that the aforementioned Decree was affixed and published in the City. Vincentius Benaglia, Curs. A.

[*Latin ed. p. 463*]

FROM THE HOLY CONGREGATION FOR THE SACRED RITUALS: DECREE CONCERNING THE BEATIFICATION AND CANONIZATION OF THE VENERABLE SERVANT OF GOD, POMPILIA MARIA PIROTTI, A LAYWOMAN, PROFESSED IN THE CONGREGATION OF SAINT NICHOLAS, PRIEST, OF THE POOR, OF THE MATRIS DEI SCHOOLS, OF PIOUS INSTITUTIONS. REGARDING A DOUBT. WHETHER IT IS ESTABLISHED THAT THEOLOGICAL VIRTUES OF FAITH, HOPE, AND CHARITY IN GOD AND NEIGHBOR, AS WELL AS THE CARDIINAL VIRTUES OF PRUDENCE, JUSTICE, FORTITUDE, AND TEMPERANCE, AND THOSE THINGS ADJACENT TO THEM, EXIST IN A HEROIC DEGREE, IN THE CASE AND TO THE EXTENT OF WHICH WE ARE SPEAKING? IT SEEMS TO HAVE HAPPENED BY DIVINE PROVIDENCE THAT, AT THIS TIME, WHEN THE SERVANTS OF THE CHURCH ARE BEING FORBIDDEN AND ENTIRELY EXCLUDED FROM FOSTERING YOUTH, THE EXCELLENCE OF VIRTUES WITHIN THE CHURCH IS CELEBRATED, WHICH THE VENERABLE POMPILIA MARIA PIROTTI DEMONSTRATED, DEVOTING HERSELF ENTIRELY TO THE EDUCATION AND INSTRUCTION OF YOUNG PEOPLE IN THE CALASATICIAN INSTITUTE OF PIOUS SCHOOLS. SHE

Translated by churchlatin.ai, a product of Boyne Archives

WAS BORN ON THE THIRD DAY OF OCTOBER, IN THE YEAR 1710, IN THE VILLAGE OF MONTISCALVI, IN THE DIOCESE OF BENEVENTANA, FROM THE PARENTS OF JEROME AND URSULA BOZZUTI, WHO WERE DISTINGUISHED BOTH BY THE EXTENT OF THEIR WEALTH AND BY THE PIETY OF THEIR MANNERS AND THE INTEGRITY OF THEIR MORALS; AND THEY DESIRED NOTHING MORE THAN TO CULTIVATE THEIR SON DILIGENTLY AND TO EDUCATE HIM WITH THE BEST ARTS. THE YOUNG BOY RESPONDED APPROPRIATELY TO THE CARE OF HIS PARENTS, SINCE, ABANDONING CHILDISH TRIVIALITIES, HE DILIGENTLY DEVOTED HIMSELF TO WORKS OF PIETY. AND THROUGH THE INNOCENCE OF HIS MANNERS, THE MORTIFICATION OF HIS BODY, THE FREQUENT RECEPTION OF THE SACRAMENTS, AND THE CONSTANT DIFFUSION OF DIVINE CHARITY IN HIS HEART, AND THE CHARITY OF FRATERNAL LOVE FOR HIS PEERS, AND EVEN FOR THE VILLAGERS, HE TAUGHT THEM THE MYSTERIES OF THE FAITH, PREFIGURING THE GOSPEL THROUGH EVANGELICAL MINISTRY. AND WHEN HE WAS DIVINELY CALLED TO CARE FOR THE SALVATION OF SOULS, HE OVERCAME THE THINGS THAT OBSTRUCTED THE WAY.

[*Latin ed. p. 464*]

464 He requested to be sent to Benevento, and he began his studies in the Congregation of the Poor, at the Mother of God school, among the Piarist Brothers; in which place his virtue shone so brightly that he surpassed all others as an example. With fervent spirit and vows, and later, after being ordained to the priesthood, he more eagerly and diligently each day pursued the arduous path of Christian perfection. For he declared perpetual war against his body, in order to suppress all movements of the mind, and to keep the flesh, conspiring against the spirit, in subjection. Among other instruments by which he mortified himself, he constantly wore a wooden cross upon his chest, with iron points piercing inward, which wounded his breast. With a zeal for humility, he often went barefoot, even over rough and stony paths, and he frequently spent many nights in the garden, contemplating divine things, under rain and snowy skies. His dwelling appeared to be a dwelling of poverty, and his sustenance seemed to be a continuous fast or abstinence. Thus, he carried the mortification of Jesus in his own body, so that the life of Jesus might be manifested also in his own body. In accordance with the discipline of the Institute, which he observed most diligently until his death, he labored for many years in the instruction of young people, or in the teaching of the humanities; and he cared for those whom he found as students, not more for their learning than for their piety. Sent to Naples, to the house of his Congregation, he devoted himself entirely to the salvation of souls, both through

Translated by churchlatin.ai, a product of Boyne Archives

daily sermons to the people on matters of divine importance, and through tireless zeal in hearing confessions; and the example of his virtues and the fame of his evangelical charity attracted such a large crowd that the place where he heard confessions or preached seemed more occupied than filled. But the cunning of the Devil did not fail to envy so much good for souls, and he so fiercely and persistently attacked the minister of Christ with injuries and calumnies, that the Venerable Servant of God, carefully heeding the advice of his superiors, moved to Ancona. The most faithful disciple of Calasanctius, having as an example the heroic patience of the Holy Founder, bore the most severe persecution not only with equanimity, but even with cheerfulness. Thus, God so—

[*Latin ed. p. 465*]

Decretum 465: "As gold is tried in the furnace, and as a victim is received [by God], so He glorified him." Indeed, with the same fervor, he exercised his apostolic ministry, first in Ancona, and then in neighboring places, with great benefit to souls, offering himself as an example of good works in teaching, proclaiming the testimony of Christ with integrity, in the demonstration of the Spirit and power, in the simplicity of heart, and in the grace of God. Finally, having returned to the house in Apulia, he became all things to all men, striving earnestly to save all, and also attending to the needs of that people, collecting alms which he solicited from door to door, and which were often miraculously increased in his hands. But now, the eternal rest that was due to him after so many evangelical labors was almost at hand. In the beginning of July of the year 1766, the Venerable Servant of God began to be afflicted by a fever, and although he was feverish, for eleven days he preached to the people and celebrated the Holy Mass, transported by the heavenly fervor with which he was accustomed to be filled, and he sat in the confessional to hear confessions; but finally, when his strength failed, he was taken to his bed; and on the third day, fortified by the Holy Eucharist and the sacred oil, holding the image of the Cross firmly against his breast, he peacefully passed away, lying on a bare board, amidst the prayers and tears of his brethren, on the eve of the Kalends of July, after the Vespers of the Blessed Virgin Mary of Carmel, as he had long foretold that he would be called by his most beloved Mother on that very day. He had not yet completed his fifty-sixth year, of which forty had been spent in educating youth and in exercising his ministry, for the glory of the divine name and for the salvation of souls. As is reported concerning the death of the Venerable Pompili, a great crowd gathered from neighboring regions to the body of the deceased; and for the sake of religion, each took what he could of the hair and clothing of the Venerable Man; indeed, with a sudden rush, they broke into the sacred tribunal in which he had heard confessions, and tore it apart, and even the smallest fragments were eagerly claimed by each one. The reputation for holiness, which the Venerable Servant of God

Translated by churchlatin.ai, a product of Boyne Archives

had acquired among all through the excellence of all virtues during his life, continued to grow with the passage of time; and this is confirmed by the Acts, volume X, page 130.

[*Latin ed. p. 466*]

466 The heavenly decrees confirmed the graces, which the Almighty God, moved by the prayers of the Venerable Pompilii, deigned to bestow. Therefore, as soon as circumstances permitted, in the year 1839, a question concerning the introduction of the cause was proposed, and the commission for this purpose was signed by His Holiness Pope Gregory XVI on the fifth of August, with his own hand. Subsequently, the proceedings were completed according to the apostolic constitutions. The excellence of the virtues of the Venerable Pompilii was first discussed in the Preliminary Assembly, presided over by the Most Reverend Cardinal Patrizi, then the promoter of the cause, on the fifteenth of February of the year 1874; and then in the Preparatory Congregation at the Vatican, in the halls, on the sixth of August of the year 1874. Finally, in the general assembly held in the Apostolic Palace before the Most Holy Lord, our Pope Leo XIII, on the thirteenth of July of this year, the Most Reverend Cardinal Aloysius Bilio, Bishop of Sabina, proposed the following question: "Does it appear that the Venerable Servant of God, Mariae Pirotti, possessed the theological and cardinal virtues, and those attached to them, in a heroic degree, and to the extent required for the matter under consideration?" Then the Most Reverend Cardinals, presiding over the Congregation of Sacred Rites, and the individual Consultor Fathers, unanimously expressed their opinion in due order. The Most Holy Lord, before pronouncing the decree on this matter of utmost importance, earnestly encouraged all to implore the light of the Divine Spirit. After repeated prayers to God, having carefully considered the gravity of the matter, and with the Lord's favor and inspiration, He decided to pronounce judgment. Therefore, the Divine Host, most piously offered, was presented in His private oratory in the Apostolic Palace at the Vatican, on the twenty-third Sunday after Pentecost; and there, with the Most Reverend Cardinal Dominic Bartolini, Prefect of the Congregation of Sacred Rites, and the Most Reverend Cardinal Aloysius Bilio, Bishop of Sabina, and the Relator of the cause, together with the Reverend Father Dominic Salvati, Promoter of the Sacred Faith, and myself, the Secretary, it was solemnly decreed:

[*Latin ed. p. 467*]

Decree 467: It is to be ascertained whether the virtues of Faith, Hope, and Charity, both towards God and towards one's neighbor, as well as the Cardinal virtues of Prudence, Justice, Fortitude, and Temperance, and those things attached to them, are present in the Venerable Servant of God, Mary Pirotti, a professed nun of the Order of St. Nicholas, belonging to

Translated by churchlatin.ai, a product of Boyne Archives

the Congregation of the Poor Schools of Matris Dei, in the heroic degree, in the case and to the effect of which we are speaking. This Decree is to be made public law, and is to be recorded in the acts of the Congregation of Sacred Rites, as ordered on the fifteenth day before the Kalends of December, in the year 1778. D. Cardinal BARTOLINI, Prefect of the Sacred Rites. L. © Father Placid Ralli, Secretary of the Sacred Rites. IACIENSIS. Decree, concerning the manner of chanting the invitatory in the Divine Office. The Bishop of Iaciensis reported to the Congregation of Sacred Rites that this practice exists in his Cathedral Church, whereby the singers, in the invitatory, after completing the singing of the verse "Gloria Patri," the choir responds with the part of the invitatory according to custom, and then the singers themselves chant the entire invitatory without the choir's response. Indeed, since this practice appears contrary to the custom of other churches, in which the invitatory is repeated in the last verse partly by the singers and partly by the choir, so that the choir itself completes that singing, the same Bishop humbly inquired of the same Sacred Congregation: Whether such a practice can lawfully be maintained in the Cathedral Church of Iaciensis? Furthermore, the Sacred Congregation of Rites, having heard the opinion of another of the Masters of the Apostolic Ceremonies, and in relation to the report of the undersigned Secretary, judged it fitting to respond as follows: Let the practice be maintained. And thus it responded on the 26th of November, 1878. D. Cardinal BARTOLINI, Prefect of the Sacred Rites. For the Reverend Father A. Placid Ralli, Secretary. Ioannes Can. Ponzi, Substitute.

[*Latin ed. p. 468*]

BY THE DIVINE PROVIDENCE OF OUR MOST HOLY LORD LEO, PAPA XIII, through a Motu Proprio by which the use of the German character is abolished, and the use of lead coins with attached cords is limited, in the Apostolic Letters. L E O, PP. XIII. The governance of the entire Church, through humility, is entrusted to Us, among other things, requiring that those improvements and modifications which seem to serve the public good more effectively, and to be more suited to this our age, be sought out and brought about, especially in ecclesiastical matters. Therefore, since it has been demonstrated by experience that the German character, commonly called "Bollatico," hinders the reading of Apostolic Letters and delays their dissemination until an authentic copy, called a "Transumpt," has been signed; and that the lead coin greatly impedes the easy transmission of such Letters, about which we have heard complaints; We, considering these and other minor inconveniences, deem it Our Apostolic duty to address them. Therefore, after consultation with Our beloved Son, the Cardinal Pro-Datary, and after hearing also Our beloved Son, the Cardinal Vice-Chancellor of the Holy Roman Church, by these present Letters, through a Motu Proprio concerning the character,

Translated by churchlatin.ai, a product of Boyne Archives

of which We have spoken above, We decree and declare the abolition of its use in the Apostolic Letters, ordering that from the publication of these Letters, Apostolic Letters be written and printed in common Latin characters on parchment, as is customary, while maintaining firmly all subscriptions of officials and ministers, with the respective designation of each office.

[*Latin ed. p. 469*]

Regarding the lead seals, together with the attached cords, We decree that they are to be preserved solely in the Apostolic Letters concerning the foundations, establishments, and dismemberments of major Benefices, as well as in other solemn acts of the Holy See. In all other letters, and especially those concerning minor Benefices and dispensations regarding impediments to marriage, by Our Apostolic authority, through the present document, We abolish them, and We declare that they are to be abolished and We command that they be replaced and substituted by the impression of a newly made red seal, bearing the images of the Apostles Peter and Paul, surrounded by the inscription of the reigning Supreme Pontiff. Those types which have been established for faithfully preserving and safeguarding the lead seals, We hereby confirm, and We decree that they are to be strictly observed. Therefore, We command Our Cardinals, the Pro-Datary, and the Vice-Chancellor of the Holy Roman Church, and their successors in office, through this Our Motu Proprio, that they, in the future, in any dispatch of Apostolic Letters of this kind, having the aforementioned and ordered matters before their eyes, observe them diligently, and that they ensure that they are inviolably observed by all and each of the officials, ministers, and persons subject to them. Notwithstanding any Apostolic Constitutions and Ordinances, and, if necessary, without prejudice to the law, and other Our and Apostolic Chancery regulations; nor Privileges, Indulgences, Faculties, and Apostolic Letters of special note, and from whatever cause perhaps here needing to be expressed, granted, approved, and renewed, usages, styles, and customs even long-standing and established, which in any way contradict the foregoing, We hereby derogate from all of them and each of them, for the full and sufficient expression of the matters above, expressly and specifically in these Our Motu Proprio Letters, derogating from all other contrary things whatsoever.

[*Latin ed. p. 470*]

Motion 470. Therefore, no human being may dare to violate, suppress, alter, confirm, command, establish, order, or contradict this Our decree, or presume to act in defiance of it. But if anyone should presume to attempt this, let him know that he will incur the wrath of Almighty God and of the Blessed Apostles Peter and Paul. Given at Rome, near St. Peter's, on the twenty-ninth day of December, in the year of Our Lord one thousand

Translated by churchlatin.ai, a product of Boyne Archives

eight hundred and seventy-eight. LEO PP. XIII. Cardinal SACCONI, Prefect. CHARLES. ADDRESS of the Most Holy Lord, Our Pope Leo XIII, delivered on February 28, 1879, to the Most Reverend Cardinals in the halls of the Vatican. Venerable Brothers, We are pleased today to enjoy your presence, as instituted by Our Predecessors, to discuss the confirmation of the Patriarch of the Chaldeans of Babylon, whose election the Chaldean Bishops have undertaken, in order to provide for the governance of the widowed See. For those things which pertain to the Eastern Churches, Venerable Brothers, we consider to be truly worthy of our special care and attention, as We have learned has been the practice of Our Predecessors throughout all ages. Indeed, their concern and love for the Eastern Churches was so great that Basil, writing to Damasus, expressed himself in these words: "We..."

[*Latin ed. p. 471*]

In every age, the admirable power of your charity has been manifest. For they knew the ancient nobility of those regions, in which the light of justice shone upon the human race; and also the ancient glory of those Churches, which have produced brilliant lights of heavenly wisdom and admirable sanctity. Therefore, from the very beginning of Our Pontificate, having seen the Eastern Churches beset by grievous storms, We have striven to offer help to their particular needs; and having found a suitable opportunity, through envoys of the most important European princes who are deliberating on the public affairs of the East, We have not neglected to perform all duties, so that the right of the Catholic Religion to be freely exercised in those regions might be publicly recognized and secured. And since this has happily occurred, it is Our fixed purpose to give unremitting effort, that this right may fully prevail in all things, and that, with the freedom and dignity of the Catholic profession asserted, those foundations may stand firm, by which, above all, public order, public authority, charity and kindness among men, the order of society, and all human culture are nourished and flourish. We trust, Venerable Brothers, that those who govern the affairs of the Ottoman Empire will readily understand that it is their duty to fully and abundantly grant to the Catholics subject to their dominion what justice and equity demand; especially since they have recently and brilliantly experienced the fidelity and the best intentions for the public good of those Catholics, which their adversaries unjustly sought to bring into suspicion and disrepute. Thus, it will come to pass that the peoples of the Catholic communion will receive salutary benefits from the ministry and care of the Apostolic See; and that the adherents of the Catholic faith, seeing the difference between the happiness they enjoyed in times past and the miserable condition into which they have now fallen, will prudently decide to seek refuge and salvation in the institutions of their ancestors, who are in communion with the Catholic Church, and in obedience to its

Translated by churchlatin.ai, a product of Boyne Archives

laws.

[*Latin ed. p. 472*]

472 The allocutions of this Holy See maintained their dignity, and flourished with glory. Now, Venerable Brothers, while explaining what is required by Our Apostolic Ministry to alleviate the suffering of the Chaldean Church, We remind you that that Church was widowed last year, due to the death of the Venerable Brother Joseph Audo, who, by the blessed memory of Our Predecessor, Pope Pius IX, was confirmed in that dignity in a Consistory held on September 11, 1848, and had been canonically instituted to it. This Archbishop, who was adorned with an outstanding sense of piety and religion, for some time in the later years of his life, was carried away by the fervor of evil designs, and was forgetful of his faithful obedience to this Apostolic See; but, being admonished by Apostolic authority, he returned to his duty, so that, rendering due obedience to the Roman Pontiff, he endured great troubles from those dissenting from his nation for the cause of Christ, and, with the approach of his death, left behind a supreme testimony of the sorrow with which he begged for forgiveness for his error, a testimony of his devoted will, and of a humbled spirit, towards this See of Peter and the Vicar of Christ, to the great edification of all. After his death, the Archbishops of the Chaldean rite convened in a Synodal Assembly in the Monastery named after the Blessed Virgin Mary, at Alkosh, and, observing the customary ceremonies, they elected, by their votes, the Venerable Brother Peter Elijah Abolionan, Bishop of Geziren, as Patriarch of the Chaldeans of Babylon, on July 26 of the past year. We have received letters concerning this election, which both the electors of the Bishop and the elected Patriarch sent to Us, along with a declaration of their obedience to this Roman Apostolic Church, requesting that We would confirm the election and bestow the honor of the sacred pallium upon the elected one, by Our Apostolic authority. We hope, Venerable Brothers, that the aforementioned Venerable Brother Elijah, considering how much more indebted he will be to Us, the more abundant the grace that will be bestowed upon him, will have nothing older than to fulfill, in the rank that he has attained, all the duties of a good shepherd.

[*Latin ed. p. 473*]

This decree fulfills 473 items, and diligently and beneficially dedicates its efforts to the safety and growth of the Chaldean Church. With this hope, and considering all matters pertaining to the propagation of the Faith among the Eastern Churches, which are entrusted to our Congregation, and after careful examination and approval, we have decided, according to the judgment of this Congregation, to confirm the Most Reverend Brother Peter Elijah as Patriarch of the Chaldean Church of Babylon, and to bestow upon him the pallium, taken from the body of the Blessed

Translated by churchlatin.ai, a product of Boyne Archives

Peter, today. Therefore, by the authority of Almighty God, and of the Holy Apostles Peter and Paul, and by our own authority, we confirm and approve the election or petition made by the Most Reverend Brothers, Bishops of the Chaldean rite, concerning the person of the Most Reverend Brother Peter Elijah Abolionan, appointing him as Patriarch and Shepherd of the Patriarchal Church of the Chaldean Babylon, as will be expressed in the Consistorial decree and document: notwithstanding any contrary provisions. In the Name of the Father, and of the Son, and of the Holy Spirit. Amen. APPOINTMENTS OF BISHOPS. On February 28, 1879. His Holiness Pope Leo XIII, having made the aforementioned decree, proposed the following Churches: THE ARCHIEPISCOPAL CHURCH OF SPOLETO, which was spontaneously relinquished by the Reverend Father Dominic Cavallini Spadoni, for the Reverend Father Mariano Elvetio Pagliari, who has reached the age of forty-five years. In Rome, among the students of the Pontifical Seminary.

[*Latin ed. p. 474*]

The following individuals were nominated as bishops: 474 bishops were appointed by Pope Pius, and were granted a doctorate in philosophy, sacred theology, and both canon and civil law. He was a Censor and Academician at the Roman Theological Academy, a Canon Theologian at the Cathedral of Eugubina, and has held the unique dignity of Praepositus there until the present time. The Episcopal Church of Hetalonia, in the territory of the infidels, and the Coadjutor See with future succession to the Cathedral Churches of Marsica and Potentia, perpetually and canonically united, were conferred upon the Reverend Father Aloysius Carvelli, who has surpassed his sixty-third year. He was granted a doctorate in sacred theology and in both canon and civil law, and has fulfilled the office of Vicar General in spiritual matters, and is among the Prelates attached to the Holy See's household. For the Reverend Father Silvestro Sembratowicz, a priest of the Greek-Ruthenian rite. Who, through the benevolence of the Holy See, was also appointed as an auxiliary to the Reverend Father Joseph Sembratowicz, Archbishop of the Ruthenians of Lviv and Halych. Among the students of the Pontifical College of St. Athanasius, of the Greek-Ruthenian rite, in Rome, he was granted a doctorate in Sacred Theology. The Episcopal Cathedral Church of Iuliopolitan Cadiz, or Gaditana, was conferred upon the Reverend Father James Català and Albosa, in the forty-fourth year of his age. He was granted a doctorate in the faculty of Sacred Canons and a bachelor's degree in Sacred Theology. The Cathedral Church of Castri Maris was conferred upon the Reverend Father Vincent Maria Sarnelli, born of noble parents in Naples, in the forty-fourth year of his age. The Cathedral Church of Arimina was conferred upon the Reverend Father Francis Battaglini, in the fifty-sixth year of his age. He was honored with a doctorate in Sacred Theology and held the first dignity of Archdeacon

Translated by churchlatin.ai, a product of Boyne Archives

in the Metropolitan Church of Bologna until the present time. The Coadjutor See with future succession to the Cathedral Church of Boiano was conferred upon the Reverend Father Francis Macarone, until now.

[*Latin ed. p. 475*]

Nominations of Bishops: 475. The Bishop of Tharmiensis and his Coadjutor, R. P. D. Vincent Bisceglia, Bishop of Thermulae. The Cathedral Church of Alatrium, favored by R. P. D. Peter Saulini, formerly Bishop of Rosen, in part infidel. The Cathedral Church of Malacitan, favored by R. P. D. Emmanuel Gomez-Salazar, formerly Bishop of Seguntinum. The Cathedral Church of Alba-Regale, favored by R. P. D. John Pauer, formerly Bishop of Olympensis, in part infidel. The Metropolitan Church of Arbor, for R. P. Bonfilio Mura, a priest of the Diocese of Bosana, and expressly professed member of the Order of the Servants of the B. V. M. with perpetual administration of the Cathedral Church of Campania, favored by R. P. D. Salvatore Nappi, formerly Bishop of the Diocese, in part infidel. The Metropolitan Church of Tarraco, favored by R. P. D. Benedict Vilamitjana et Viia, formerly Bishop of Derthusensis. The Patriarchal Church of Antioch, of the Latin rite, in part infidel, favored by R. P. D. Peter Villanova Castellacci, formerly Archbishop of Petrensis. The Monastery of B. M. V. de Maris-stella, and the Priory of B. M. V. de Augia-Maiore in Helvetia and Austria, are canonically united, favored by R. P. Maur Kaikum, a priest of the Diocese of Curiensis and expressly professed member of the Order of Cisterciensis, elected by the Chapters and Monks in the Monastery of B. M. V. Augiae-Maioris according to custom, and confirmed by the benignity of his Holiness. The Metropolitan Church of Compsan, in part infidel, favored by R. D. Achilles Rinaldini, a priest of Rome. Who, at that time, was granted both a philosophical and a theological doctoral degree, and was assigned to the honorific position of Chamberlain among the most esteemed Chamberlains of His Holiness Pius IX, and also among the intimate and supernumerary Chamberlains of his Holiness. The Episcopal Church of Abilen, in part infidel, favored by R. D. Peter Facciotti, a priest of Praenestinus. Who was appointed as an auxiliary to the Episcopal Church of Cyrenen.

[*Latin ed. p. 476*]

476. Nominations of Bishops: The Most Reverend Lord Anthony, Cardinal of Lucca, has been appointed Bishop of Praeneste.

The EPISCOPAL CHURCH of Okopen, in a part of the country among the infidels, and the coadjutor position with future succession to the Cathedral Church of Ceneda, have been filled with the favor of the Reverend Mr. Sigismund, a member of the Counts Brandolini, a presbyter of the Diocese of Ceneda. He, who having once ministered to souls at the church of the Immaculate Virgin, erected at the expense of his family, and enriched with sacred furnishings, revenues, and a parochial house, had previously

Translated by churchlatin.ai, a product of Boyne Archives

resigned as Archpriest and Parochial Vicar of S. Maria de Miane, where his own funds have also contributed to the construction of a more spacious church.

The CATHEDRAL CHURCH of Cartagena, in the United States of Colombia in South America, has been filled with the favor of the Reverend Mr. Emmanuel Ceron, a presbyter of the Archdiocesan See of S. Fe in Bogota. He, who having been awarded a doctorate in Sacred Theology, and having successively administered various parishes, resigned as the Vicarius Foraneus and Synodal Examiner of his Archdiocese.

The CATHEDRAL CHURCH of Herbipolis has been filled with the favor of the Reverend Mr. Francis Joseph Stein, a presbyter of the Diocese of Herbipolis. He, who was recently awarded a doctorate in Sacred Theology, having served as Dean and Rector at the university of the theological faculty, has now resigned from his position as Professor of Moral and Pastoral Theology.

The CATHEDRAL CHURCH of Herbipolis.

The CATHEDRAL CHURCH of Derthusen, has been filled with the favor of the Reverend Mr. Francis Aznar and Puego, a presbyter of the Diocese of Jaca. He, who having been awarded a doctorate in Sacred Theology, having previously served as a parish priest in Tamari te de Litera, has now resigned as a Canon of the metropolitan church of Tarragona.

The CATHEDRAL CHURCH of Seguntin, has been filled with the favor of the Reverend Mr. Anthony Ochoa and Arenas, a presbyter of the Calaguritanian Diocese. He, who was previously awarded a doctorate in the faculty of law, has now resigned from his position as Archpriest of that same metropolitan church.

The CATHEDRAL CHURCH of Tutelen, has been filled with the favor of the Reverend Mr. Henry Charles Dominic Denéchau, a presbyter of the Diocese of Angers.

[*Latin ed. p. 477*]

The following appointments of bishops have been made:

He who was Professor in the small seminary of Angers, and afterwards Lemo, the Vicar General of the Bishop of Vich, has fulfilled the office of Vicar General in Spiritual Matters until now.

The Cathedral Church of Canaries, for the Reverend Father Joseph Pozuelo and Herrero, who was hitherto the Bishop of Antipatri, in the [region] of infidels.

The Patriarchal Church of Babylon, of the Chaldeans, with the favor of the Reverend Father Elijah Abolionam, promoted from the See of Jaziren, of the Chaldean rite.

The Archiepiscopal Church of Adana, in the [region] of infidels, with the favor of the Reverend Father Dominic Cavallini Spadoni, the retiring

Translated by churchlatin.ai, a product of Boyne Archives

Archbishop of Spoleto.

Furthermore, the following churches have been provided for by decree:

The Archiepiscopal Church of Emessen, in the [region] of infidels, has been granted to Charles John Seghers, transferred from Canea.

The Episcopal Church of Nyssen, in the [region] of infidels, has been granted to the Reverend Father Placid Mary Schiaffino, Abbot and General Vicar of the Olivetan Congregation.

The Cathedral Churches of United Parenten and Polen have been granted to the Reverend Father John Glavin, a priest from the Diocese of Trieste, an examiner for the synod and a parish priest.

The Reverend Father Prosper Augustus Dusserre, a protonotary ad instar, and General Vicar of Julia Caesarea, has been granted the Cathedral Church.

The Episcopal Church of Ceramen, in the [region] of infidels, has been granted to the Reverend Father Salvator Casanas y Pages, the Apostolic Administrator of the See of Urgell.

The Cathedral Church of Constantin, in the [region] of infidels, has been granted to the Reverend Father Valentino Garnier, of the Society of Jesus, the Apostolic Vicar of NanKinen.

The Cathedral Church of Armidale, in Australia, has been granted to the Reverend Father Elzear Torreggiani, formerly a definitor of the Capuchin Province.

The Cathedral Churches of Middlesbrough and Leeds, recently erected from the division of the Diocese of Beverlacen, in England, have been granted to the Episcopal Church of Titopolitan.

[*Latin ed. p. 478*]

478 The nominations for bishops were: Reverend Father Robert Cornwhite, transferred from the Diocese of Beverlacen to Leeds, and appointed as provisional apostolic administrator in Middlesbrough. Finally, the Most Holy Father, through a letter from his Secretary, appointed Reverend Father Alexander Grossi as Bishop of Tripoli, in partibus infidelium, as an auxiliary to Reverend Father Charles Gigli, Bishop of Tiburtina. DECREE OF THE HOLY CONGREGATION OF THE COUNCIL. June 15, 1878. A demonstration of piety towards God and beneficence towards his citizens was given by Aloysius A., who established two canonries in the collegiate church of the diocese: one under the title of Saint Aloysius, and the other of Saint Aemydius. During his lifetime, he actively exercised the patronage of these canonries; after his death, he ordered that they should perpetually belong to his nephews, Anthony and Alexander Guidi. And, excluding the female line, he willed that the first male child of the aforementioned Anthony should possess the active right of patronage. However, should the male line of the Guidi family become extinct, he called upon the male

Translated by churchlatin.ai, a product of Boyne Archives

line of Vincent Castellani to exercise the active right of patronage of the canonry of Saint Aloysius, excluding women. Regarding the passive right, he decreed that those originating from his native land should be chosen, and especially from the families of Vincent Castellani, Nicholas Zazza, etc. He also granted each of the families of Guidi and Castellani the faculty of conferring one of the canonries upon one of their members; and, provided that only one existed among them, and that they wished to follow the ecclesiastical order, they could request the collation from the Ordinary through a suppliant petition.

[*Latin ed. p. 479*]

Canonry 479. He also enacted a law by which he stipulated that, in the absence of suitable candidates from within the town, preference should be given to outsiders, even diocesan clergy, and that the nomination of both townspeople and outsiders should be carried out freely by the Guidi family; and that the nomination could never fall to an individual whose family was obligated to provide a canon for the same collegiate church. When both canonries were vacant, Joseph Guidi presented to the Episcopal Curia the town priests James Cappella and Salvatore Capriotti on August 15, 1876, with the intention that they be admitted. This was received with displeasure by Subdeacon Dominic Rosati, who, arguing that he belonged to the family of Michael, daughter of Vincent Castellani, from which the founder wished to choose the canons, immediately, on August 28th, appeared before the Curia, and, as they say, raised an objection that would not be dismissed, and requested that the dispute be judged by the Congregation of the Holy Council. The Bishop, when questioned, stated that the speaker was related to two brothers who were both canons of that collegiate church. He strongly recommended the nomination of Priest Capriotti; and in the event that the election, according to the founder's wishes, was carried out by the patron Guidi. The Bishop also stated that Marchese Guidi had rendered meritorious service to ecclesiastical affairs; and that he could, with a clear conscience, postpone the nomination as long as he had not reimbursed himself for the expenses incurred for the redemption of the canonry, according to the letters of the Holy Penitentiary. Finally, the Ordinary indicated that Priest Cappella, nominated by Guidi, was the son of a certain Castellani, who was the sister of the mother of Subdeacon Rosati. Dispute Synopsis. DOMINIC ROSATI'S DEFENSE. He stated that he belonged to the family of Vincent Castellani; but, according to the latest civil law, the term "family" encompasses, not only agnates, but also collateral relatives indiscriminately, according to the text in *Corpus Juris Civilis*, *De verb. signi*, and *De Luca de iurep. Disc. 5*.

[*Latin ed. p. 480*]

480 Canon 2, regarding Primogeniture, distinction 2, number y and 8,

Translated by churchlatin.ai, a product of Boyne Archives

states: « The term 'family' extends more broadly in civil law than in the newest Latin usage, and both agnates and cognates are included, as after Baldus. » However, the same author, in the aforementioned passage, number 12, states more strongly concerning Canon Law: « When dealing with ecclesiastical matters, it is more appropriate (and it is not a question of contradicting the testator's will) to include all those connected, and to consider blood ties according to the sense of Canon Law rather than civil law, as stated by Duran, decisions 115, number 2. Barat, and Additions... And therefore, regarding the term 'family,' even if it were considered solely in itself, it does not seem to lead to a restriction to only agnates. » The Rota in Osimo, in a legal judgment of March 1703, section non obstante coram Muto, S. C. Concilii in the Anconitana Chapel, June 12, 1762, section, and Melevitana Institution, August 5, 1876, section 2, agree. However, according to the testimony of the Ordinary, Dominicus Rosati is the son of Michaelina, the daughter of Vincent Castellani, and from this family, according to the foundation's statutes, are to be chosen the persons to be named. Therefore, the patron Guidi, by naming an outsider, and not someone descended from the testator's family, seems to have acted unjustly. Indeed, in law, it is accepted that in the absence of agnates, cognates should be admitted to exclude an outsider, as taught by the Rota, decision 74, number 12, paragraph 2, recent. De Luca, on lineage law, article 22, number 2. Furthermore, the founder did not add the surname Castellani, and therefore, according to the accepted practice in Italy, only agnates are included: « Indeed, the expression of a proper surname cannot restrict the call to only agnates, but it can also include cognates, when it is stated that the demonstration serves to indicate the origin and the principle from which those called should come. » Pitonius, on patronage controversies, allegation 75, number 18. Furthermore, it should be noted that the founder explicitly excluded women in the active form of patronage, but made no mention of this at all in the passive form: which suggests a presumption that he intended to include not only agnates, but also members of the family.

[*Latin ed. p. 481*]

Canon 481: Castellani, but also males descended from females of the same family. However, the fact that two paternal uncles of the orator Dominic are present is not an impediment; because they do not constitute the same family as Dominic, since they are not bound by any legal obligation to provide support to the niece. DEFENSE OF THE PATRON GUIDI. The advocate of Guidi warned that Dominic had been completely deprived of his rights according to canon law, because he does not belong to the family of the Castellani; and even if he did belong to the family, he would be entirely rejected, because he lacks the principal conditions added by the founder. Regarding the first point, the advocate recalled the words of the founder concerning the passive right of patronage, calling upon the family of Vin-

Translated by churchlatin.ai, a product of Boyne Archives

cent Castellani. He argued that the name of the family does not extend to agnates /196 ff. concerning the meaning of the word/. "It is clear that the children of women are not in the family 'of' them, because those who are born follow the family of the father, not the mother." Therefore, Peregrin, *de fideicom.*, art. 31 § 25: "That the family is understood according to agnatic descent... is clearly demonstrated in my opinion." And the advocate argues that this is also true in matters of patronage, just as it is in the case of entailments, citing Gagliardi, *de iurepatr.*, cap. n, n. 15, where he states: "Because of the universal custom of Italy... we follow rather the law of the Digest than that of the Code in this matter; for agnates are preferred to cognates in the inheritance of ascendants, and cognates do not at all encompass the family, according to the common usage and interpretation, but only agnates..." Therefore, in this realm of reserved patronage, it never passes to the children of women of the family. Lotter, *de re benef.*, lib. 2, q. 11, n. 7: "...for those who are born of women are of a different family, that is, of the father, and not of the mother." Moreover, if the family name has a surname added to it, in which case, nothing can be clearer in removing cognates, according to De Luca, *de iurep.*, disc. 20, n. 6 seqq. Nor is it different in the decision of the Rota in the *Septempedana Capellaniae*, January 26, 1798, decision 16, n. 6 seqq., before Malvasia, where: "Quoties coercita Acta, tom. XI, fase. CXXX. 31

[*Latin ed. p. 482*]

482. "A canonry is a calling to a specific family, with the addition of a surname; it is no less certain that only those who are related by blood are included under that calling, and that only those who share the same surname constitute that same family... It has long been established that if a family is designated by a certain surname, then only those who are related by blood and who share that same surname can claim the right to present [a case], unless they are related and share the same surname. Card. De Luca, *de iurep. disc.* 26, n. 8; Piton, *de controv. patron*, allegation 100, n. 1; Rota, etc." And the Advocate argued that even more strongly, because the foundation of the canonry of Vincent Castellani was established impersonally; therefore, there can be no doubt that the impersonal addition of the surname refers to the body of relatives, and excludes no one, as the Rota states in the cited decision concerning Malvasia. Furthermore, the Advocate argued that this interpretation of the law is confirmed by the will of the founder himself. For when the founder spoke of the exercise of the active patronage in the name of the family, he intended to include only those who are related by blood, expressly excluding female relatives; and then, by implication, he calls upon those of the family of Vincent Castellani, etc., to the passive patronage... Therefore, the family is considered to have been named in the same sense in the context of the passive patronage as it was defined a few lines earlier, namely, in the male lineage and in the

Translated by churchlatin.ai, a product of Boyne Archives

relationship of blood. The Advocate maintained that this interpretation is further strengthened by the fact that if the founder has stated a law that is ambiguous, or similar in both the active and passive jurisdictions, then one term requires the aid of the other. Piton, *de controv. patron*, allegation 8, n. 4, and allegation 68, n. u, where he states: "I believe that the passive patronage is first reserved to those of the line of primogeniture, as if they were chosen, because of that well-known rule that, unless the words of the founder indicate otherwise, the passive patronage receives an interpretation from the active, and is, as far as possible, conformed to it." Turning to a second exception, the Advocate attempted to establish that although the opponent belonged to the Castellani family, he should nevertheless be rejected, because he lacks the conditions that...

[*Latin ed. p. 483*]

Canon 483 prescribes that a founder be chosen. Furthermore, it cannot be said that an adversary does not form one family with his relatives; on this matter, Ulpianus in *I. IÇ4 % 2 de verb. signi/., writes: "By law, we call a family a group of people who are under the authority of one person, either by nature or by law; for example, the father of the family, the mother of the family, the son of the family, and then five others successively follow, such as grandchildren and great-grandchildren." And Ulpianus, in the same place, adds: "By common law, we call a family all the relatives; for although, when the father of the family dies, each has his own family, nevertheless, all those who were under the authority of one person are rightly called members of the same family, who are descended from the same house and lineage." Also, a family is called a group of people who are descended from the same last ancestor, as we say the Julian family, as if from a certain source of memory. With these things considered, the matter was referred to the judgment of the E.E. CC. to resolve the doubt: Whether there is any exception in this case. The Sacred Congregation of Religious, after deliberation on July 15, 1878, decided: Affirmative and furthermore.

RESOLUTION: From which it is gathered:

I. By canonical law, under the name of family and house, those descended from women do not fall; because such descendants bear the surname of the father, not the mother, and because the house signifies the bond of agnatic relationship, and the exclusion of female descendants is implied.

II. Therefore, the right of patronage, especially with the addition of a surname, does not belong to those descended through a woman, whether it concerns the active right of patronage or the passive right.

III. The presumptive vocation of males through women cannot be main-

Translated by churchlatin.ai, a product of Boyne Archives

tained, where both women are clearly excluded by the testators.

[*Latin ed. p. 484*]

I. Canon 484 states, or where presumptions exist which demonstrate a relationship by blood, not by adoption.

II. It must be certain that the person in question descends through the female line from the family which the founder had called to the passive right; therefore, he is not truly in the line of those called, since he is a relative, not an adopted member.

III. It is certain, according to learned authorities, that a forced calling to a specific family, with the addition of a surname, does not extend to adopted members; those alone who use the same surname and constitute the same family are included.

IV. From the Canonists, it is gathered that the passive right of patronage can receive an interpretation from the active right, whenever the founder has stated a doubtful law, or something similar in both areas of law; then, one designation requires the aid of the other.

V. In the matter at hand, it is certain that the founder, when speaking of the exercise of the active right, intended to include only those related by blood, and because he excluded women with explicit words; hence, it is rightly presumed that he spoke in the same sense when speaking of the passive right of patronage with regard to the Castellani family.

PAROCHIAL. August 24, 1878. Summary of the case. The Ordinary of the Diocese of G. having received complaints about the dishonorable conduct of Joannis Baptista, the parish priest of the place N., especially with a woman joined in marriage; he repeatedly warned him to abstain from such behavior. The parish priest, not heeding the warnings, thereby increased the scandal day by day. Therefore, in order that a remedy might be provided for this matter, on December 20, 1875, the public prosecutor appeared before the Tribunal, in order that proceedings might be instituted regarding this matter, designating 15 witnesses who were to be examined.

[*Latin ed. p. 485*]

There were 485 parishioners. The witnesses whom the public prosecutor presented testified not only about hearsay and public opinion, but also about things they had seen, which entirely suggest that the rumors lacked a solid foundation. With these things in mind, the Episcopal Court, on June 20, 1876, and on the 28th of the same month, issued the following decree: "Having considered the warnings given to him, to which he refused to comply... 'we, considering that the aforementioned Parish Priest cannot, without serious detriment to the care of souls entrusted to him, continue to exercise his office; therefore, in accordance with the statutes of the Holy Canons, we suspend him from his office... and we wish and declare that he be held suspended from the administration of the sacraments and the preaching

Translated by churchlatin.ai, a product of Boyne Archives

of the Word of God, and from all activities whatsoever pertaining to the care of souls.' On June 13, 1877, the then-new Bishop presented the matter to the Sacred Congregation, stating that the removal of the Parish Priest had given rise to many animosities and disputes among the parishioners, with some opposing the Parish Priest and others favoring him. Nor can these hatreds and animosities be extinguished until there is hope that the aforementioned priest may be restored. Therefore, having taken charge of the governance of the diocese, I requested him to send a message to the parish, promising him either a pension or a canonry in the Cathedral, but in vain. Indeed, seizing the opportunity when the Bishop was absent, he promoted a kind of plebiscite in his favor through a public announcement. That people are easily swayed, because in their simplicity, they readily believe the serious accusations against the Parish Priest. Therefore, the Bishop requested that a deadline be set for the Parish Priest to pursue his rights through an appeal from the sentence of the Episcopal Court, which, after it had passed without effect, he would be absolutely removed from the parish. He also requested that the possibility of holding a consultation be considered, so that the needs of the people could be addressed immediately. The Sacred Congregation replied: "To the aforementioned Bishop, we grant one month's time for the Parish Priest..."

[*Latin ed. p. 486*]

486 The parish priest "is to send a notification to the parish; by this deadline, he will know whether the process will proceed further." The Bishop, reporting the parish priest's failure to send a notification to the parish, requested that he be excused from attending, so that the aforementioned parish priest might be removed, and a new parish priest be appointed, endowed with great prudence, to settle all the disputes that have arisen among the parishioners. Disputation of the Synod. DEFENSE OF THE PARISH PRIEST. While the defender had presented many arguments to demonstrate the parish priest's piety, zeal, and love for his people, addressing the merits of the case, and presenting the following points of reason, he argued that the decree of the court should be overturned. And first, due to a defect in form; for since the imposition of suspension often carries with it infamy, the prescribed form for this must be strictly observed by law. This form consists in the fact that the sentence of suspension must be pronounced in writing by the Judge, who must also write down the reason for which the suspension was imposed, so that the Judge must deliver the same suspension in writing to the suspended party within a month if requested, Chapter i Decret, in 6, book 5, and Gloss, there, Van-Espen in ius Eccles, paragraph 3, title 2, De poen. et cens. Eccles., number 17. Furthermore, the Judge must hear the presumed guilty party, so that he may defend himself, for the law proclaims that no one shall be condemned without a defense. However, all of these things

Translated by churchlatin.ai, a product of Boyne Archives

were disregarded in the pronouncement of the decree; and therefore, the decree itself cannot be upheld. Moreover, the injustice of that decree is increased, because through it, not just any suspension was imposed, but it led to the deprivation of the parish benefice, without observing all that is prescribed by the Holy Canons. In order that a deprivation of the parish benefice may occur, it must be fully proven that the parish priest is guilty of a very serious crime, which would entail the penalty of deprivation; and with this crime existing and duly proven, it is necessary that a threefold warning and a solemn and formal process precede. Chapter 7.

[*Latin ed. p. 487*]

The parish priest [was] 487 [and] likewise, according to the Gloss, deprived [of his office]. He was deposed by the Holy Congregation of the Council in Cracow, on February 10, 1770. All these things are lacking in his case, the advocate said. And first, the witnesses do not appear to be free from every exception, so that it cannot be affirmed that they fully prove the matter. For the advocate said that the witnesses presented by the parish priest are enemies, and that, with the exception of two or three, all are related to each other by blood. But it is known that enemies cannot be witnesses against those with whom they bear enmity, according to the common opinion of the Doctors of Law, after L, Testium fides 3 in the principal texts on witnesses, and in the chapter concerning accusations, as Ferraris, Bibliotheca Ecclesiastica, universal in verb, test. art. i, n. 86, teaches. On the other hand, the advocate proved, through the testimony of many witnesses, that the parish priest had always led an upright life; indeed, two thousand four hundred inhabitants testified that they had lost a father endowed with good morals and virtue. And in truth, the Bishop himself, in the year 1874, testified that the parish priest in question was adorned with good morals. But even if it were to be supposed that the crimes imputed to the parish priest had been proven, nevertheless the decree of the court cannot be upheld due to the lack of canonical form. Indeed, the threefold warning was lacking, which should have preceded it, according to the disposition of the Council of Trent, Session 21, chapter 6 on reforms, and according to the teaching of the Holy Congregation of the Council in the decree of Severinus, April 4, 1877, §. It adds: "Not every incontinence or dishonorable conduct, or even fornication and concubinage, provides a just cause for deprivation or suspension, but only that to which a threefold warning has preceded." But it is asserted by the Bishop that the threefold warning preceded, as it is read in the decree that he was given warnings which he refused to obey; but this was not proven. Furthermore, according to the canonical form, testimonies from the depositions of witnesses cannot be received unless the witness is cited, and if he refuses to come in the presence of the adversary, otherwise they remain devoid of all value, as is commonly taught by the canonists, after chapter 2 on witnesses, as Ferraris,

Translated by churchlatin.ai, a product of Boyne Archives

in the place cited, teaches in the words "prob." n. 30. But in the case of the parish priest...

[*Latin ed. p. 488*]

Parochialis 488 was not only not cited, but neither was he questioned, nor defended, nor heard, contrary to the disposition in capias Conquerente 7 concerning restitution, and spoliation. There are other extrinsic defects in the process, which suggest the nullity of the disputed decree; for in capite Quoniam u, concerning proof, it is established "that both in ordinary judgment, as well as in extraordinary judgment, the judge must always employ either a public notary (if one can be obtained), or two suitable men, who faithfully record the acts of the judgment." However, none of these provisions were employed; indeed, depositions of witnesses signed by themselves are not found. It may be objected that such formalities could have been dispensed with, because the decree was issued with informed conscience; and since not even a word is mentioned of this intention of the Bishop, and it is not yet certain whether the Bishop can suspend from office with informed conscience. Indeed, the Council of Trent, Session 14, chapter i, concerning reforms, grants to Bishops only the faculty of suspending, with informed conscience, from the advancement to orders, or from the exercise of an order already received, as taught by Benedict XIV, in *De Synod. Dioeces.*, book 12, chapter 8, § 3. Finally, the advocate argues that the parish priest should be granted reintegration into the parish, because for two years he has patiently endured the most grievous penalty of suspension, so that if any stain existed, it should be believed to have been expiated. For the principles of reason and equity suggest that the penalty should be commensurate with the guilt, and imposed according to the nature of the guilt, which applies also to suspension and interdict, as stated by Benedict XIV, in *De Syn. Dioec.*, book 7, chapter 44, numbers 2 and 3. Furthermore, it should be noted that the Council of Trent, in chapter 6, Session 21, concerning reforms, mandates that Bishops should, after having warned them, restrain and punish those parish priests who live lewdly and scandalously, and if they still persevere in their wickedness, they have the power to deprive them of their benefices, according to the constitutions of the sacred canons, by removing them from all exemptions and appeals. Therefore, in order that the path to the deprivation of the parish may be considered just, the DEFENSE OF THE BISHOP is required.

[*Latin ed. p. 489*]

Concerning a parish priest who lives shamefully and scandalously, it appears that nothing more is required than conclusive proof of the crime, according to Canon 2, question 1, and Canon 2 of the canonical form. It was decided in question 2 and the preceding canonical form, chapter 2, and chapter 6 concerning the colaghabitation of a cleric and a woman. The

Translated by churchlatin.ai, a product of Boyne Archives

Holy Congregation of Councils in Cracow, February 1, 1770, § Et. The Privation of the Parish of Acerenza, March 31, 1833, § Nequidquam, which consists of three warnings, according to the Holy Congregation of Councils in Cracow, cited above. The three warnings, as explained by Fargna in "De Jure Patrono," part 2, canon 21, page 6, "ibi," "because with the penalty of deprivation, which is the greatest and is equivalent to civil death, cannot be imposed unless it is established that the parish priest, having been warned, has refused to abandon his concubine or other dishonorable relations with women and to turn away from the path of perdition." The graduated penalty applies only to those who hold a benefice, as stated in the Council of Trent, Session 23, chapter 14, concerning reforms. Regarding parish priests, it is desired that the procedure be such that, after they have been warned and coerced, if they persist in their improper conduct, they should be deprived of their parish benefice, as taught by Girald in "Esposizione del Ius Pontificio," part 1, book 3, decrees, title 2, concerning the cohabitation of clerics, section 332, page 228, and confirmed by De Nigris in "De Vacant." book 2, chapter 2. The Holy Congregation of Councils in Burgos, concerning the parish of Saint Donnini, March 6, 1737, formally discussed this very article. What is explicitly required by law is verified. Indeed, for a legitimate and complete proof, two witnesses of proven life and without any exception are sufficient, unless more are expressly required by law in a particular case. However, not two, but fifteen witnesses were heard; who, after being sworn by religion, testified about the parish priest's conduct, sometimes with one woman, sometimes with another. It cannot be objected that it cannot be deduced from the testimonies whether the parish priest entered the women's homes for a good or bad purpose; for metaphysical proof is not required, but that which is derived from a violent presumption is sufficient, as stated in chapter "Afferte" and in the chapter on letters concerning presumption. This violent presumption certainly exists, both from the gestures and from the mutual signs of affection, as well as from the perma-

[*Latin ed. p. 490*]

490. The pastoral duty obliges the parish priest, even if he resides alone in a house or in a secluded place, for a certain period of time, so that he may be able to commit sin, as Menoch relates to others in *Praesumptiones*, book 1, chapter 41, number 11; Sánchez, *De Matrimonio*, book 10, dispute 12, number 45. This presumption is strengthened if one considers that the parish priest was forbidden by a secular court to enter the house of a certain woman, at the request of her husband, and that, despite this prohibition, he went there, and was consequently condemned. Similarly, he was forbidden by the Curia to enter the house of another woman, but he completely disregarded this prohibition. To these testimonies must be added the testimony of a distinguished man, who stated that the prede-

Translated by churchlatin.ai, a product of Boyne Archives

cessor, who was also a Bishop, had repeatedly warned the parish priest to abandon his bad life; and that the parish priest, prostrating himself before the Bishop, begged for forgiveness for his sins. Indeed, it is well known that there is no greater proof than the confession of one's own lips. Therefore, the objection vanishes that the witnesses, being motivated by animosity, made false statements against the parish priest; for their testimonies are consistent with the testimony of two Bishops. Furthermore, it cannot be believed that Bishops would be so forgetful of the salvation of others, as well as of their own, that they would not be deterred by the divine judgment, but would be swayed by hatred or favor, and, to the singular injury of the sacred canons, would say "evil is good, good is evil," placing darkness for light, and light for darkness; *Benedictus XIV in Constitutione Cum Illud*. Furthermore, it must be noted that if two or three are considered, nothing else is asserted about the others, except that they are relatives or blood relatives of the priest whom the Bishop wished to be sufficient in the parish. Nor is it to be presumed that they, because of a distant blood relationship, wished to commit perjury and inflict harm on the innocent. The value of the public subscriptions that the parish priest presents in his defense is determined, beyond the manner in which they were collected, also by the fact that the document signed by them was always written with the same ink, and with the same handwriting.

[*Latin ed. p. 491*]

Regarding the procedure for removing a parish priest, it is to be noted that the canonical form consists of a prior threefold warning, or one for three years, according to Giraldi, *Ius Ponti*, section 232, title 2, of the Decrees. It is clear that these were not lacking in this case, both from the very decree issued by the Curia, in which "there" were warnings given to him, which he disregarded, and from the fact that he treated the complaint brought by the fiscal as if it were nothing, ignoring the condemnation of this criminal court and the repeated warnings. And in the records, there is no lack of a formal warning. However, it does not seem necessary to insist on the formalities, since the matter concerns a crime. If one were to argue that the suspension imposed on the parish priest was not permanent, nevertheless the parish priest should in no way be reintegrated into the parish, but rather should be deprived of the benefice; because he still perseveres in his wickedness. Having considered both of these points, the following questions have been proposed for clarification. I. Whether the decree of the Curia of June 28, 1876, should be confirmed or annulled in this case. II. Whether and how provision should be made in this case. RESOLUTION. The Sacred Congregation, having knowledge of the cause, decided on August 24, 1878, to respond as follows: To I. There is no basis for an appeal. To II. Before proceeding to the deprivation of the benefice, it is necessary to conduct a process, at least in summary form, to establish the incorrigibility

Translated by churchlatin.ai, a product of Boyne Archives

of the parish priest and his perseverance in wickedness. 1. From which it is gathered: I. The bishop is to be held to account, not out of malice, but out of the affection of charity, to inquire into and punish excesses, as from... Regarding summary judgments, see the Appendix referred to in Volume V, page 35 and following.

[*Latin ed. p. 492*]

I. A parish priest who, through public clamor, has become so infamous that he can no longer serve without causing scandal, nor can he be tolerated without danger, must be removed.

II. Therefore, given the gravity of the offense, although he may not be degraded from his order, a parish priest who acts shamefully must nevertheless be removed from his administration, according to the evangelical sentiment, which indicates that a steward should be removed from his stewardship if he cannot render a proper account of it.

III. However, in investigating and punishing, it must be ensured that, according to the established form of judgment, the form of the sentence itself is also observed; therefore, a parish priest canonically instituted should never be removed without a canonical cause, and without the canonical form of procedure.

IV. Consequently, in order for a bishop to be able to remove a parish priest who is descending into improper conduct, nothing more is required than that the aforementioned canonical form be followed, and that the crime be conclusively proven.

V. And both must be properly observed: namely, the canonical form of procedure, and the conclusive proof of the crime; and since the penalty of deprivation is the most severe, and is equivalent to civil death, it cannot be imposed lightly.

VI. These precautions clearly indicate that bishops can deprive scandalous parish priests of their benefices, as stated in the Council of Trent, Session 2, chapter 6, on reform: "After such priests have been warned, they should be restrained and punished, and if they still persist in their wickedness, they should be deprived of their benefices..."

VII. The graduated penalty, of which the Council of Trent speaks, applies only to other benefices, not to the parish itself. The Council of Trent, desiring that concubinage among those holding benefices might cease and that this evil custom be abandoned, established a graduated penalty for such individuals, saying: "If, after being warned by their superiors, they do not abstain from this, they shall be deprived of one-third of the fruits, revenues, and income of their benefices and pensions by reason of this very act... But if, persisting in the same offense, they have not yet obeyed the second warning, they shall not only lose all the fruits and revenues of their benefices and pensions in the same act... but they shall also be suspended

Translated by churchlatin.ai, a product of Boyne Archives

from the administration of the benefices themselves, and although thus suspended, they shall nevertheless..." retain their benefices, portions, and offices and pensions.

[*Latin ed. p. 493*]

Regarding parish priests, the same Holy Synod clearly stated that, if, after having been warned and corrected, they should persist in a wicked habit, they should be deprived of the benefit of the parish. VIII. The canonical procedure for this matter has not been neglected; it is clear that the parish priest has been repeatedly warned to avoid the wicked habit; and furthermore, the crime has been conclusively proven.

CONCERNING THE WILL OF IGNATIA PONCE. THROUGH SUMMARY PRAYERS. On September 14, 1878. Summary of the facts. Ignatia Ponce, a pious woman, in her testamentary codicil, bequeathed, among other things, a pious endowment for Masses on a plantation consisting of 3871 cacao trees. Three of the four parts of the income from these trees were to be allocated to the priest who would say so many Masses for the benefit of the pious founder, along with an alms of two and a half livres, if the priest was the testator's son; and with only two livres if he was a stranger. She ordered that the fourth part of the income should be given to the patron administrator. The present patron of this endowment presented this bequest to the Holy See, stating that the cacao trees, through the diligence of her father, now number 6560. Furthermore, she noted that there are many other pious women in her city who greatly desire that a pious work be established to alleviate the suffering of poor girls, orphans, and widows. However, they lack the financial means, and are therefore, with great reluctance, deprived of the opportunity to contribute perpetually to the Church.

Regarding the parish priest, a graduated penalty is excluded from the law; but the most severe penalty of removal cannot be imposed, except after a very serious crime, after proper warnings have been given, and after a formal process has been completed, with a solemn and just judgment by the judge.

[*Latin ed. p. 494*]

The patron, mindful of this will, sends a petition, requesting the faculty to convert three parts or half of the revenues to works of charity. The Ordinary also added prayers for this favor, foreseeing great benefit to the Church in this.

A concise discussion. To prevent faithful people from being dissuaded from generous contributions to the Church, due to the frequent alterations of the wills of the deceased, both jurisdictions strongly caution that the last wills of the dying must be religiously observed. *Can. Ultim. volunt., cons. 1, 3, quaest. 2, Cient. Quia contingit, 2, de relig. domib. Lex i, cod. de SS.

Translated by churchlatin.ai, a product of Boyne Archives

Ecclesiis.* Since it happens that... [the rest of this Latin phrase is incomplete in the provided text].

Since the Sacred Congregation does not object to such principles, as has been demonstrated from Savona, *Commut. volunt., 22 March 1823*, and from Camerino, *Iurispatron. et commut. volunt. 18 December 1824*, it seems that the current petition of the patron should be rejected.

REASONS AGAINST GRANTING THE REQUESTED INDULGENCE.

Very little weight should be given to the argument of necessity, which the Sacred Congregation is accustomed to carefully consider; for poor girls, orphans, and widows are found everywhere on earth. Therefore, if their relief were to be presented as a necessary reason for altering the last wills of the deceased, all pious bequests, and especially those for Masses, would disappear. Furthermore, the right of the chaplain designated by the testatrix herself would be violated by this indulgence. However, it is established in law that if a certain right of another is violated, the wills of the testators are not to be altered. *Monet., de commut., cap. v, n. 29, S. C. C. in Spoletana, 2 August 1823, § Testatorum.* Nevertheless, the Council of Trent, Session 23, chapter 6, on reforms, and the Sacred Congregation in Turin, March 1, 1877, and in Lucania, December 14, 1833, teach us that, with a just and necessary reason added, an alteration of the will can be permitted; although the Holy Canons are averse to such alterations.

REASONS FAVORABLE TO GRANTING THE INDULGENCE.

The public benefit to the people and the state.

[*Latin ed. p. 495*]

The commutation of the endowment is among the just causes for such a change, as taught by the Sacred Congregation of Propaganda Fide in Ripana, concerning the commutation of endowments, on April 30, 1836. And no one doubts that such a benefit exists in this case, for those who read the petition will see that it exposes the plight of so many poor girls, so many orphans, and so many widows, whose bodies and souls are in danger; and that Christian charity does not care for them, as if it were not possible to establish a pious association for their benefit. Furthermore, if the testatrix had foreseen, or had been aware of the poverty that afflicts her city, she would have disposed of her property differently, as Reiffenstuel holds, in book 3, title 26, § 23, no. 804, and as the Sacred Congregation of Propaganda Fide held in Sutri, concerning translations, on September 10, 1803. Hence, a valid reason arises from the presumed will of the testatrix for granting the commutation. Nor does the reason of necessity fail; for, as the petitioner states, the endowment could easily fall into the hands of the tax collectors,

Translated by churchlatin.ai, a product of Boyne Archives

unless more diligent and suitable provision is made for it. Therefore, not only is there an evident benefit, which is equivalent to necessity, as Schmalz states, part 3, title 23, no. 221, but the danger of the endowment being lost is verified in this case, so the place for the commutation of the endowment is easily found. Moreover, the souls of the deceased, in whose favor the endowment for Masses was established, would receive great help, both from the charity that frees them from purgatory and purifies their sins, and from the grateful spirit and prayers of so many faithful, to whose comfort the revenues are converted. Nor will the right of a third party be violated, because the titular does not celebrate Mass, due to the chronic illness from which he suffers, nor is it difficult to obtain a similar Mass endowment in those regions. Having considered these matters from various angles, the Most Reverend Fathers judged that a decision had been reached regarding the response to the petitioner's prayers. The Sacred Congregation of the Council decided on September 14, 1878, to respond: "Provided that the obligation of the Masses, according to the founder's disposition, remains firm, the remaining revenue will be allocated to a pious work to be established, in accordance with the Most Reverend Fathers."

[*Latin ed. p. 496*]

496. Regarding the exchange [of property]: I. Both laws proclaim that the wills of the deceased must be scrupulously observed; therefore, ecclesiastical authority, even through remedies permitted by law, always diligently oversees their execution. II. Consequently, the Supreme Pontiff, unless legitimate and necessary reasons are present, does not usually contradict conditions attached to a foundation, exercising his supreme power; especially if the right of a third party is involved. III. Therefore, other legal remedies must be exhausted before the rights of a third party are destroyed, and the wills of the founders are violated; and the Pontiff rarely acts otherwise without an equivalent benefit. IV. These principles have not been violated in the matter under consideration; for, while preserving the pious testator's disposition regarding the obligation of Masses, an indulgence was granted so that the remainder could be applied to a pious work. CONCERNING FUNERALS AND ENDOWMENTS. September 14, 1878. Summary of the case. The Canon of the Cathedral Church, in his testamentary dispositions concerning the funeral and burial, in the year 1874, decreed: "I wish that my body, once it has become a corpse, be buried in this Cathedral Church, with a funeral that befits my rank as Canon, thereby burdening my heirs, to whom I commend myself for their piety and judgment." This Canon, who had long resided under the parish of the Cathedral, passed away on October 16, 1876, in his native land, after approximately eight months of

Translated by churchlatin.ai, a product of Boyne Archives

illness.

[*Latin ed. p. 497*]

For the sake of expenses and benefits, he had been transferred. The parish priest of the natal land informed the president of the Chapter about the death of the canon, so that, on the occasion of the funeral, no harm would be done to the rights of the Chapter. The Archdeacon of the Cathedral took care to inform the parish priest that he did not wish the funeral and burial to take place in the parish of the natal land, due to the distance of 12 kilometers, provided that the rights which could in any way benefit the Chapter were preserved. The parish priest, since the body of the deceased had already begun to decompose, paid the just expenses to the heirs on October 18th. A representative of the Chapter had already issued a protest on the 17th, because the rights of the Chapter seemed to be violated by the celebration of the funeral outside the Cathedral. When asked for his opinion, the Bishop affirmed that the rights of the parish priest of the natal land of the deceased should be fully protected.

A concise summary of the discussion: It is undoubtedly the right of the parish priest to perform funerals within the boundaries of his parish, and to bury any deceased who have died within the limits of his parish. *Amostaz, de Caus. piis, cap. 8, n. 16; Sperell., decis. 87, n. ij; Rota, in Romana, Iuris tumulandi, 20 febr. i 702, coram Priolo, n. ip.* It is not permissible to object to a burial that has been arranged in a will; because, as the Bishop said, testamentary dispositions do not seem to be binding, when unforeseen circumstances arise that make the execution of the will difficult. And just as some laws are not binding in certain cases, so too are the last wishes of the testator. If the canon had absolutely wanted to be buried in the Cathedral, he should also have considered the case of his death being far from the Cathedral; and he should have instructed his heirs to bring the body to the Cathedral from whatever location: which was not done by the testator. Furthermore, the Bishop continued, before the aforementioned canon completed his will, he made it known to the Order that he wished to have a burial place.

[*Latin ed. p. 498*]

498. To establish funeral arrangements and benefits for himself and for others in his native land. He also offered a gift to obtain this concession; which the Ordinary, however, denied to the petitioner. From this, it is easily understood that the will of the deceased Canon was not absolute and precise regarding the burial of his own body entirely within the Cathedral; and therefore, the right of burial belongs to the Parish Priest of his native land. Therefore, the Bishop proceeds, and it is also clear that the exhumation of the body cannot take place; for it pertains to human decency that, with the rights and benefits to which they are due, the bones of the deceased

Translated by churchlatin.ai, a product of Boyne Archives

should be disturbed and moved as little as possible. See the law concerning religious matters and funeral expenses; the law concerning bodies; Rota, in Recent, decree 6, numbers 4 and 7, part II; Secret Consistory of the Congregation, in Todi, July 4, 1722, regarding the question: Whether there is a place for the exhumation and restitution of the body in question, and what benefits should be restored, answered: Affirmative, both regarding the benefits and furthermore, and in accordance with the intention that the body should not be exhumed. However, the Chapter seemed to favor neither the restitution of benefits nor the fourth portion [of the funeral expenses]. Not the restitution of benefits, because they belonged to the Parish Priest of the native land from whom the sacraments were received, since the Canon had resided in this parish for a long period of time before his death. Not the fourth portion: because the Diocesan Synod, part 4, chapter 4, concerning burials and funerals, considers the case of a burial that must be given in the parish in which the death of the deceased occurred accidentally, and makes no mention of reserving the fourth portion of the funeral expenses for the Parish Priest, under whose jurisdiction the deceased habitually resided. Furthermore, greater force is given to this observation, by virtue of which it is not granted to Parish Priests the right to the fourth portion of the funeral expenses of parishioners who die in places distant from the parish, as if it were a matter occurring within the boundaries of the diocese. And this observation, in the matter at hand, should be most carefully considered, as is taught after the text in the chapter, when the ancient questions of St. Lawrence are discussed.

[*Latin ed. p. 499*]

Funerum Canon. vol. i, chap. 23, no. 2; chap. 17, and emolumentorum no. 4; Barbosa, 499, on the office of the Parish Priest. On the other hand, it is observed that the assistance of the law which Parish Priests have in the funerals of the deceased within the limits of the Parish does not pertain to them by reason of material location, or residence, or accidental death within the same Parish, even when the sacraments are administered at the end of life; but by reason of the spiritual office which the Parich Priest exercises towards his parishioner, while he lives, by providing spiritual things; and therefore it pertains only to the proper Parish Priest of the deceased, according to the literal text in chap. i, on Burial; in chap. 2, in no. 6; in Clementine, "verum," in the same title. This is what the authors, both ancient and modern, teach; Navarr., in chap. Placuit, no. 102, on penance, dist. 6, "there," "it is inferred that the funeral pertains to that Parish Priest who administers the sacraments." Diana, part. ç, tract. 7, miscellanea, resol. 62, "there," "from whom we receive the sacraments while living, from him we ought to receive burial after death." Anacletus, in ius canonie, book 3, title 28, no. 16, "there," "The sacred canons, with regard to burial, do not consider the place where someone is assisted in the last moments, but

Translated by churchlatin.ai, a product of Boyne Archives

where in life he is accustomed to be nourished with heavenly food."

DEFENSE OF THE CHAPTER OF THE CATHEDRAL. Therefore, he who lives in the countryside, and dies there, is not to be buried in the rural parish, but is to be brought back to the parish of the city, to whose Parish Priest the right of burial pertains, according to the literal text in chap. Is who are on burial, in no. 6; Pignatell., consult. 63, no. 4, vol. 7; Pirhing, book 3, title 28, no. 6. And Canons residing in parishes distinct from the Cathedral, and dying there, are to be buried not in those same churches, but in the Cathedral, because in that place they perform divine and sacred duties and are nourished spiritually; Amostaz, de caus. piis, book 6, chap. 2, no. 30; Van Espen., part. 2, title 38, chap. 3, no. 18; Piton., discept. 31, no. 13. The Sacred Congregation of Rites, on March 13, 1736, in S. Severini, Praeeminentiarum, no. n: "It was decided that Canons, even if they have a residence in another parish, are to be buried in the Cathedral Church, provided that the parochial rights of the Parish Priest of their residence are satisfied." Therefore, when...

[*Latin ed. p. 500*]

The Canon P. died in the parish of his native land, and it is understood that, according to the law, and according to the will of the deceased himself, he should be buried in the Cathedral church. Therefore, it is clear that the right to bury the deceased belonged to the Chapter, and his body should be brought to the Cathedral church.

Nor does distance present an obstacle; for it is established by law that the body should be brought to its proper burial place, whenever it can be done conveniently, chapter 3, on burials, paragraph 6. It is said that the body is transferred conveniently when the distance is within a day's journey, that is, within a single day's travel. The text in law 3, ff. de verb. signi/., Rota, in Treviren., Fourth Funerary Decrees, March 21, 1737, § 6, cor. De Canillac, teaches that twenty *milliaria* are counted for one day. But the parish of his native land is only nine *milliaria* from the Cathedral. Therefore, the body of the Canon should be transferred to the Cathedral for burial.

1. It is not appropriate to say that the Canon P. had two residences; for he only had a dwelling in the parish of his native land, which is entirely distinct from a residence. The Canon came to his native land without the intention of establishing a new residence there, but with the intention of returning to his residence at the Cathedral once his illness was over.

Therefore, it seems that the body should be returned to the Chapter with all its belongings; for, as it is clear from the choice of burial, the laws strictly require that the will of the deceased be religiously observed, chapter 3, on burials, and chapter 6, of the same title, in which Alexander III decreed: "We command that... the monks be compelled to return to these brothers (St. Martin) with all integrity the bones of the aforementioned woman, and the benefits which they received as a result of her burial, and that they do

Translated by churchlatin.ai, a product of Boyne Archives

not presume to do such things in the future."

This is confirmed by pontifical authority, as in Recole, Vol. V, page 124 of this work, where it is mentioned that the Abbot General, who was dying in a city that was about thirty *milliaria* from Rome, nevertheless had his body brought to Rome by railway. Therefore, distance does not present an obstacle, so that bodies may be brought to their proper burial place.

[*Latin ed. p. 501*]

According to the statutes of the Roman clergy, chapter j, § 28, and the Sacred Congregation of Councils in the decree *Callien. seu Urbinaten., Iuris tumulandi*, August 30, 181/, concerning the second proposed doubt: "Whether there is a place for exhumation and restitution of the corpse and of the emoluments pertaining to the church where the burial takes place, in the following case," the following response was issued: "Affirmative in all respects." The Diocesan Synod also confirms what we have stated. However, if the Chapter refuses to grant the right to reclaim the corpse and all emoluments, the fourth part of the funeral expenses must certainly be granted to it. It is sufficiently established by ecclesiastical law and discipline that the fourth part of the funeral expenses must be assigned to the parish church, even if the corpse is to be buried elsewhere, as stated in Clementines, *Dudum, de sepulturis*, Session 23, chapter 13; in Barbosa, *de offic. et potest. Parochi*, n. 27; and in the Sacred Congregation of Councils in Pisauren, *Quartae funeralis*, January 26, 1824. Therefore, since the Parish Church is canonically the Cathedral Church, at least a fourth part of the funeral expenses must be given to the Chapter. With these premises, the following questions were proposed:

I. To whom does the right of burial and funeral expenses belong in this case? And, in favor of the Cathedral Chapter, the answer is affirmative.

II. At whose expense will the place for exhumation be provided, for the purpose of restoring the corpse in this case? The answer is negative in all respects.

III. What emoluments must be restored in this case? The answer is affirmative, with the exception of the fourth part.

FROM WHICH WE CONCLUDE: I. By reason of the spiritual office, namely, providing spiritual matters to the parishioners, the pastors have a legal right in funeral matters.

[*Latin ed. p. 502*]

I. Concerning funeral expenses (funerum) and the bequests (emolumentorum) of the deceased within the limits of the parish, especially not in cases of accidental death within the same parish, even when the sacraments are administered at the end of life.

II. Therefore, the funeral (funus) pertains to the parish priest (parocho proprio), who, by residence, becomes such, of the deceased person; for it

Translated by churchlatin.ai, a product of Boyne Archives

is fitting that, after death, they receive burial from him, from whom, while living, they received the sacraments.

III. The sacred canons, with regard to burial, do not consider the place where someone expires, but rather where, while still alive, they were accustomed to be nourished by the heavenly food (i.e., the Eucharist).

IV. The canons, since they are incorporated into the Chapter of the Church, and are members of it, and remain parishioners of that Church wherever they reside, are to be buried in the Chapter's church; just as religious, who are of the monastic family, are to be buried near the church of the monastery.

V. For in the Chapter's church, the canons perform divine and sacred rites, and are dismissed (spiritualiter) from this life; therefore, it is fitting that they be buried in that same church, wherever they may have their residence, or wherever they may depart from this mortal life.

VI. The canon who was to be buried in the Cathedral was, both according to canonical jurisprudence and according to his own decision, to be buried there; and he ordered in his will that his body be buried in the Cathedral.

1. The right of burial (tumulandi) has been transferred to the public cemeteries; and for reasons of health, these same cemeteries have been substituted for the burials of individual churches. However, if the right of burial has been transferred, the right of performing the funeral and receiving the bequests remains. Therefore, as has been noted many times (and especially in Vol. I, pages 85 and following, and page 124, Appendix V; Vol. IX, pages 20 and following), the law concerning public cemeteries only prohibits the permanent placement of a corpse in churches; or it only changes the place of burial materially and physically. But all those things remain which are connected with the property of the tomb, such as the funeral procession of the corpse, the exposition of the same in that church, prayers, and other funeral rites. It is also within the power of the faithful to determine for themselves the church for their funeral.

[*Latin ed. p. 503*]

Regarding the conferring of canonical offices and the cantorate 503 REGARDING THE CONFERRING OF CANONICAL OFFICES AND THE CANTORATE. On June 30, 1877, and January 26, 1878. Summary of the case. It was presented to the Sacred Congregation for the Council that Pope Sixtus IV, in the year 1475 of the restored Church, elevated the Church of St. John the Baptist in the place A... to the dignity of a collegiate church, with the care of souls. The chapter was to consist of eight canons and an Abbot. The Abbot, for the time being, was granted the right to nominate canons, and subsequently, four canons were assigned the care of souls. In the year 1778, in order to increase the splendor of the worship, six mansionaries, or singers, were added by the Abbot himself, who reserved the right to

Translated by churchlatin.ai, a product of Boyne Archives

nominate for new positions for himself and his successors. Then, certain chapter statutes were established and approved by the Prince, and the Abbots, until our time, have exercised the right to nominate both canons and mansionaries. However, when the vacancies of three mansionaries were imminent, the Bishop expressed a doubt to the Abbot regarding his rightful authority to nominate for the aforementioned positions. Therefore, fearing that prejudice might be brought against his rights, the Abbot petitioned the Sacred Congregation to order the Bishop to abstain from nominating new positions until the same Sacred Congregation had given its judgment. When asked about the custom, the Bishop insisted with all his might that the right to nominate did not belong to the Abbot, but to himself. Furthermore, he mentioned a certain rule, commonly known as the "Piano," proposed by his predecessor, accepted by the current Abbot and the entire clergy, and approved by the executive commission of the Concordat in the Kingdom of Naples; which rule stipulated what should be observed in the conferring of positions. A copy of this rule was requested from the Bishop. Likewise, when he mentioned a declaration of the Abbot, a copy of this was also requested.

[*Latin ed. p. 504*]

504 The matter concerning the conferring of canonical prebends and chantries was brought before the court. The Bishop presented a copy of the declaration, but not the aforementioned document, which could not be found. Considering these and other circumstances, which seemed appropriate for the purpose of resolving the dispute, the question was proposed at the general assembly under the form of a doubt, which is found at the end of this discussion. Synopsis of the debate. DEFENSE OF THE ABBOT. The Defender of the Abbot, in the first place, cited the very words of the aforementioned Bull, beginning with "Ex suprema," in which these words are found: "To him, that is, to the Abbot, pertains the conferring and provision of the aforementioned canonical prebends and chantries, their institution and removal..." He maintained that these words are conclusive, provided that the authenticity of the Bull is established beyond all doubt. He argued that the Bull is authentic, and he supported this with both negative and positive arguments. Regarding the former, he pointed out that the absence of the Pro-Datary's subscription does not invalidate the document, because such a function was established by Innocent XII in the year 1489, and the Sixtine Constitution was issued in the year 1475. Nor should it be considered among apocryphal documents, because the subscription of one or the other official of the Apostolic Datary is lacking, since the Constitution that is now held is a copy, of which the original has either perished through the ravages of time or for other reasons, or at least is preserved in the archives of the Monastery of Mater Domini, to which the Abbot's execution was entrusted. Furthermore, he added that the execution

Translated by churchlatin.ai, a product of Boyne Archives

was not demanded of the Bishop or Metropolitan, but of the simple Abbot, for the Supreme Pontiff is free to choose the executor of apostolic letters, and the Abbot is a dignity adorned with those qualities which the sacred canons require in a delegated judge, according to chapter 2, De Rescript., in VI. Turning to the positive arguments, the Advocate maintained that this matter had already been definitively decided by the Apostolic See; for in the year 1656, a question arose concerning the Abbot-

[*Latin ed. p. 505*]

Regarding the right to confer canonries and chantries, the matter between the Abbot and the Bishop, concerning certain canonries conferred by the Bishop, the delegated judge from the Apostolic See not only declared that no such conferrals had been made, but decreed that the Abbot should be restored to his quasi-possession of the right to confer canonries. Indeed, he asserted that this right of the Abbot had been recognized and approved by the highest civil authority; for, by a royal decree of May 7, 1789, by which the statutes of the church of St. John the Baptist were approved, the Sixtine Constitution was considered as the foundation of the law, and the fifth article expressly reserved to the Abbot the right to confer canonries and benefices... by virtue of the foundation of the Collegiate Church itself. To all this, the custom, which is not only centuries old but also of unforgettable favor to the Abbot in this matter, was to be added, and which, as canonists teach, provides a better title than any other and is presumed to have the approval of the Apostolic See – *De Luca, De Regal., disp. 47, no. n; De beneficiis, disp. 32, no. 2 et 4; De Empkyt., disp. 60, no. 3, Reiffens., De Praescripta, no. 144; Rota, Decis. 374, no. n; decis. 494, no. 34, part. iç, and others throughout.* Furthermore, it could not be denied that the duties of the mansionaries had been established by the Abbot himself in 1778 from the revenues of a certain pious work; for it is only natural that the Abbot, who possessed the right to institute canons, should reserve the right to present mansionaries to himself and his successors, according to the norm established in the constitutions and observed for a long time. If this were admitted, he continued, it would not follow that the Abbot had not reserved this right to himself and his successors, nor that the right of patronage did not belong to the Abbot for the time being. Indeed, it is certain that the mansionaryship was established from the revenues of the Chapel of St. Cajetan, which were held as the goods of the Collegiate Church; but it is true that the right of patronage is acquired by a church through the erection or foundation of a chaplaincy or benefice from the goods of that church – *Piton., De contra patron., All. 34, no. i; Ferraris*.

[*Latin ed. p. 506*]

506 The laws concerning the conferring of canonical prebends and chantries, as explicitly stated in *Bibliotheca Canonica*, verb. Iuspatr.,

Translated by churchlatin.ai, a product of Boyne Archives

art. i, n. 16, do not contain any reservation; as De Luca, *De iure patr.*, disp. 55, nos. 2 and j, rightly observes; therefore, considering the nature of the constitution of the Church of St. John the Baptist and the nature of the endowments of the prebends, it must be concluded that the right to nominate the prebendaries belongs to the Abbot for the time being. This argument gains further strength if one considers the recent establishment of two new prebends in the year 1789, alongside the existing prebends; for in the instrument establishing this foundation, it is stated that this foundation was established "in the same manner as in the year 1758, the Abbot of that time... added six prebendaries or chanters to the aforementioned Chapter, who are at the disposal of the Abbot." From this, it follows that both the old and the new prebendaries are at the disposal of the Abbot for the time being; and therefore, he must also have the right to nominate them, otherwise he could not have the right to remove them. This was further established by the episcopal decree of December 10, 1798, in which the new erection of the two prebends was approved, and it was permitted that two prebendaries be nominated and presented by the Abbot, for such a purpose, through the aforementioned advocate. Hence, one of the six old prebendaries was, upon presentation by the Abbot, appointed by the Bishop. Finally, this demonstrates a custom, which, as De Luca, *De iure patr.*, disp. 8, no. 5 and disp. 22, no. 8, teaches, is often to be considered as law in matters of canon law. It is clear from the foregoing that, in the early years of the foundation of the prebends, presentations were made by the Abbot; and that, in later times, the custom of the Abbot making the nominations was established, first from the act of nomination made on June 11, 1817, in which it is stated: "observing the customs of our predecessors, the Abbots," and secondly, from a letter of the current Bishop, dated 1837, stating that the nomination had been made by the Abbot. The lack of nominations from the year 1838 to the year 1845 is attributed to the vacancy of the abbatial See.

[*Latin ed. p. 507*]

Regarding the conferring of canonical offices and prebends, it was provided for by the oeconomus appointed by the Bishop, who, at the time of the appointment, reserved the right freely to confer the offices of the prebendaries. However, from the year 1845, when a new Abbot was elected, until the year 1859, these provisions were made, by common agreement, with the aim of providing for the prebendaries. Afterwards, due to the overthrow of the government and the depredation of the Church's patrimony, these provisions ceased. In the year 1871, three prebendaries were presented by the Abbot to the Archbishop Administrator, who, without any controversy, granted their institution. From this, it could be concluded that, according to both the law and custom, or observance, the nomination of both the canonical offices and the prebendaries belonged to the Abbot.

Translated by churchlatin.ai, a product of Boyne Archives

DEFENSE OF THE BISHOP. On the other hand, the Bishop maintained that the alleged foundation bull of the collegiate church was manifestly false, both externally and internally. Furthermore, the apostolic letters, sealed with lead, which the Abbot presented as the foundation of his right to confer canonical offices, were found to be lacking the signature of Cardinal Pro-Datarius, and therefore did not deserve any credence. The evasion of the Abbot or his defender, that the office of Pro-Datarius had not yet been established in the year 1475, was of no value, for Rigantius, as mentioned above, lists several Dataries in the *Com. in Proem. Reg. Cancell.*, volume i, number 140. "Under Martin V," he writes, "Paulus Ferrantes from Meldula was appointed Datary by the same Pontiff as Bishop of Caesena on February 27, 1426, and died in the year 1431. UgkelL, *Ital. sac.*, volume 2, in *Epis. Caes.*, column 426, number 66, according to the Venetian edition." Moreover, the Bishop continued, the letters presented were not signed by any other officials of the Datary; they lacked a seal, were not written in the German script, and were not written on parchment paper but on ordinary paper. They could not be considered a summary or a copy of a document, since they lacked the seal and the official signature of the apostolic official appointed for this purpose, nor was it apparent from whom they had been drawn up, and they contained numerous errors.

[*Latin ed. p. 508*]

508 The power to confer canonries and chantries is impugned. Therefore, he concluded, these documents lacked all external marks of authenticity. But even their internal content revealed them to be either forgeries, or at the very least, clearly doubtful. Furthermore, their execution was not entrusted to the Bishop, or the Capitular Vicar (if the diocese happened to be vacant), or the Metropolitan, but to the Abbot of the Monastery of Mater Domini, who never possessed a curia or territorial jurisdiction. Moreover, the Abbot of the Collegiate Church was granted the power to institute and dismiss canons – which is so enormous that no sane person could believe it; for the Pope would have granted the Abbot almost the entire Episcopal curia in order to institute canons, and to dismiss those who were poorly qualified, after due process. Finally, he noted that a Bull of Sixtus IV, beginning with the words "Ex paternae providentiae," dated in the year 1475, could not be found anywhere, neither in the archives of the Collegiate Church, nor in the episcopal archives, nor in the metropolitan archives, nor even in Rome, despite the most diligent searches. All of this, he said, provided not merely doubt, but almost certainty, that the aforementioned Bull was a forgery. And therefore, since the foundation for the Abbot's claim to name canons was removed, the right itself necessarily collapsed. This concerns the authenticity of the Bull. But, he added, even if the Bull were authentic, it would be of no benefit to the Abbot who had explicitly renounced all

Translated by churchlatin.ai, a product of Boyne Archives

his rights, with the approval of the Apostolic See. Furthermore, in the year 1843, the Bishop of that time, in order to finally put an end to the perpetual disputes and contentions with the Abbot of St. John the Baptist, issued a certain decree (commonly called the "Piano") to serve as a norm for future dealings between the Bishop and the Abbot. This decree, confirmed and approved by both the Apostolic Nuncio and the highest civil authority, stipulated that the granting of canonries for the first six months belonged to the Apostolic See; for the next four months to the Bishop; and finally, for the last two months, to the Abbot.

[*Latin ed. p. 509*]

Concerning the granting of canonical prebends and chantries, 509. All of the clergy accepted and signed these things, binding themselves with an oath never to oppose these statutes. Indeed, even the present Abbot, who assumed his office in the year 1845, approved of everything equally in his own name and in the name of his successors, and issued a sworn declaration, stating that neither he nor his successors would do anything contrary to such regulations. Since, from that year 1845, these aforementioned norms have been strictly observed without any contradiction, it is surprising, the Bishop concluded, that the Abbot today, after more than thirty years, should go back on the constitutions which he himself accepted and solemnly swore to uphold. Having stated these things, the Bishop, addressing the Abbot who was bowing, pointed out that the decree of the Bishop of 1798 granted the Abbot the right or privilege of conferring prebends; but that in that decree, no trace of this alleged right could be found, since it contains the approval of two prebends, which were added to the others. Furthermore, the Bishop stated that he had been unable to find any record of the erection of these six prebends, either in the episcopal archives or in those of the collegiate church. However, it is easy to demonstrate, the Bishop continued, that the Abbot could not have reserved the right to confer prebends, nor could the Bishop have granted it, because their endowment was established from the goods of the Chapel of Saint Cajetan, over which the Abbot had pure and proper administration. Surely, who is ignorant of the decree of the Council of Trent (session 14, chapter 12, concerning reform), which states: "No one, of any ecclesiastical or secular dignity, can, by any means, claim or obtain the right of patronage, unless he has newly founded and built a church, benefice, or chaplaincy, or has endowed a church already erected, which, however, lacks a sufficient endowment, with competent funds from his own and patrimonial goods?" Furthermore, the Bishop added, the Abbot lacks the favor necessary to exercise this alleged right; and that exercise, according to the laws of Trent, "consists in repeated presentations over a very long period, exceeding the

Translated by churchlatin.ai, a product of Boyne Archives

memory of men" (session 18).

[*Latin ed. p. 510*]

510 Concerning the right to confer canonical offices and chantries (chapter 5, concerning this matter), it cannot be maintained that this right existed from the most ancient times, since the institution of resident canons is of more recent date; nor can presentations be verified, since only two have been discovered up to the year 1827, and it is unknown how they were made. Moreover, if in the year 1836 the Bishop approved a presentation made by the Abbot, it is clear that he was deceived, for three years later, another vacancy was offered, with the concurrence of the parties involved. After these matters, the Bishop spoke of the declaration of the year 1845 issued and signed by the Abbot, and all the more so because, on August 2, 1854, a competition for the vacant resident canonry was announced by an edict signed by the Abbot, in which it was stated that, not only at that time, but always in the future, the resident canonry would be conferred through a competition, as determined in the established regulations agreed upon by the Bishop and the executive commission. It cannot be maintained that this regulation completely lacked validity; indeed, its existence is proven by: 1. A report made by the Bishop to the aforementioned Commission, in which he strove with all his might to provide for these offices through a competition; 2. The declaration of the Abbot himself, dated July 12, 1845, in which not only is mention made of the aforementioned regulation or plan, but it is accepted without any limitation; 3. Finally, by the letters of June 17, 1846, sent to the Bishop by the minister in charge of ecclesiastical affairs, in which it is read that the regulation concerning the clergy of the church of St. John the Baptist had been approved. All of these things, when considered together with the subsequent events, not only suggest, but provide certainty that this regulation existed, even though it may now be obscured. From all of this, the Bishop concluded, the Abbot's right was fading away. After these arguments were presented by both sides, the proposed cause was brought before the assembly on June 30, 1877, but with a delayed resolution, it was ordered that further investigations be conducted to ascertain the facts, commonly known as the "Plan." In the meantime, the Abbot sent a message through his representative to the first...

[*Latin ed. p. 511*]

Regarding the conferring of canonical prebends and chantries, to the specific part of the matter, namely, the conferring of a canonical prebend. Having diligently examined the matter, the following question was again proposed for clarification: In what case and to whom does the resolution belong? The Sacred Congregation for the Affairs of the Church responded on January 26, 1878: Concerning the provision for a canonical prebend, it pertains to the procurator; concerning chantries, it pertains to the Ab-

Translated by churchlatin.ai, a product of Boyne Archives

bot. FROM this declaration, you gather: I. That papal bulls, in order to be considered authentic, must possess, above all, four external characteristics: namely: 1. That they are written on parchment; 2. That they are written in the Teutonic script; 3. That they are provided with a leaden seal, with a red and gold thread attached to the parchment; 4. That they bear the subscription of the Cardinal Pro-Datary, and of other officials of the Datary who are deputed for this purpose. II. Furthermore, if it is suspected that they are spurious, they are considered apocryphal if the concession is so broadly stated that it exceeds the limits usually imposed by the Holy See. III. In the case where a copy of a bull is presented, and it exhibits no sign of authenticity, either externally or internally, it is lawful to doubt that the bull is apocryphal. IV. In matters of legal patronage, besides the foundation, the observance is of the greatest importance, for it is the best interpreter of the laws. Therefore, in this case, even if the foundation of six prior mansions exists, 1 Today, after the motion of Leo XIII (may God long preserve and protect him), the Teutonic script and parchment are no longer used in matrimonial dispensations and in bulls for the collation of minor benefices which do not have an attached dignity. You have this document on page 465 of this volume.

[*Latin ed. p. 512*]

512 The right to confer canonries and prebends is known only through conjecture, based on the foundation of the two aforementioned [institutions], but because the observance favored the Abbots, the right of presentation to the benefice was preserved for them. V. No valid reason was found for the norm that was said to have been approved by the executive commission of the concordat, nor was any explanation given by the Abbot, perhaps because no copy of the original was presented; moreover, the Abbot could not, without the permission of the Apostolic See, prejudice the rights of his successors. FROM THE DECREE OF THE HOLY CONGREGATION OF RITES. Portus Aloisii. Since certain images of the Blessed Virgin Mary, representing alleged apparitions of the same Virgin, are commonly displayed for veneration not only in the homes of the faithful, but also in churches, the Reverend Bishop of Portus Aloisii deemed it his duty to humbly request a solution to the following doubts from the Holy Congregation of Rites: Doubt I. Whether it is permissible, or at least tolerable, for Ordinaries to allow or tolerate the public veneration of images, or statues, of the B. V. M. under the titles of Lourdes, La Salette, and the Immaculate Conception, which emit rays of light from their hands, to be displayed in churches? Doubt II. Whether the apparitions, or revelations, which are said to have occurred, and which have given rise to the cult of the B. V. M. under the

Translated by churchlatin.ai, a product of Boyne Archives

aforementioned titles, have been approved by the Apostolic See?

[*Latin ed. p. 513*]

Decree 513, Question III. Whether a pious confraternity in honor of Saint Aloysius of the Blessed Virgin Mary of La Salette may be admitted by the Bishop? Question IV. Whether the feast of the Blessed Virgin Mary under the same title may be celebrated with a Mass and a double rite of the first class, with an octave, in that place? Question V. Whether special litanies of the Apparition of the Blessed Virgin Mary of La Salette may be recited there? These questions, which the undersigned Cardinal presented at the Ordinary Congregation of the Sacred Rites held today in the Vatican, were considered by the Most Eminent and Reverend Fathers, who are responsible for safeguarding the sacred rites, after hearing the opinions of one of the theological consultants, and of the Most Reverend Assistant, and after mature deliberation, they judged it necessary to respond. To I. Affirmative, provided that the precautions prescribed by the Decree of the Council of Trent concerning invocations, veneration, and relics of saints, and sacred images (Session 25), and confirmed by the Sacred Constitution of His Holiness Urban VIII, are observed. To II. Such apparitions or revelations have not been approved, nor disapproved, nor condemned by the Apostolic See, but only permitted to be believed with human faith, according to tradition, as they say, confirmed by suitable testimonies and monuments. Therefore, nothing prevents the Ordinary from acting in the same way, with a suitable declaration or protestation, in the same sense, following the precedent established by Pope Urban VIII in the promulgation of decrees. To III. Affirmative. To IV. Negative, unless with a special and express apostolic dispensation. To V. Negative. And thus they responded and ordered that it be observed on May 12th, in the year 1877. Acts, volume XI, page 130, number 33.

[*Latin ed. p. 514*]

Decree 514. This is found in the Acts and records of the Secretariat of the Congregation for Sacred Rites. For the record. From the same Secretariat, on December 2, 1878. To the Most Reverend Father Placido Ralli, Secretary. John Can. Ponzi, Substitute. L. S. S. FROM THE PARTICULAR CONGREGATION CONCERNING THE MANDATE OF THE HOLY SEE REGARDING THE RIGHT TO CONSECRATE ALTARS AND TITLE CHURCHES. January 25, 1879. Decree of the City. When, in the year 1777, an altar was to be inaugurated in the newly constructed underground area of the Basilica of Eudoxia, for the preservation of the sacred relics of the Prince of the Apostles, a doubt arose: whether the right to consecrate it belonged to the Most Eminent Cardinal of the Titular Church, or rather to the Most Eminent Cardinal Vicar of the City. Pope Pius IX entrusted the judgment of this question to four Cardinal Bishops of the Suburbicarian districts;

Translated by churchlatin.ai, a product of Boyne Archives

meanwhile, on the very day of the festive consecration, it was decided that, by reason of possession, the consecration should be performed by the Titular Cardinal; thus, the solution to the doubt was delayed. Furthermore, the Supreme Pontiff Leo XIII, by divine providence, considering it fitting to carry out what the Predecessor had determined with prudent deliberation, and deeming it entirely opportune to exercise the jurisdiction of the aforementioned act, [did so].

[*Latin ed. p. 515*]

Regarding the law concerning the consecration of altars and titular churches, in order to preclude any doubt on the matter, he commanded the Most Eminent Cardinal, Dean of the Sacred College, to convene, as soon as possible, a particular Congregation. Furthermore, he deemed it fitting to add four Most Eminent Suburbicarian Bishops, and also the Most Eminent Cardinal Bartolini, Prefect of the Congregation of Sacred Rites, in place of the Most Eminent Cardinal Bishop of Tusculum, who was infirm. Therefore, on the twenty-fifth day of January, they met, by common consent, in the residence of the Most Eminent Cardinal, Prefect of the Congregation of Sacred Rites; present were the Most Eminent Cardinal Di Pietro, Dean of the Sacred College and Bishop of Velletri and Ostia; the Most Eminent Cardinal Sacconi, Bishop of Porto; the Most Eminent Cardinal Bilio, Bishop of Sabina; the Most Eminent Cardinal De-Luca, Bishop of Palestrina, together with the Most Eminent Cardinal, Prefect of the Congregation of Sacred Rites, and the Secretary of that same Congregation; and after a thorough examination, and the most careful discussion of the opinions, and the elaborate and considered consultations, which had been presented by both Doctors of Canon Law and Masters of Sacred Ceremonies, they considered the following question: "Whether the right of consecrating altars in titular churches pertains to the Most Eminent Cardinals who hold those titles, or rather, to the Most Eminent Cardinal Vicar of the City?" They responded unanimously: "Affirmatively, to the first part; Negatively, to the second part." A report on all matters was made to the Most Holy Lord Pope Leo XIII by the undersigned Secretary of the Congregation of Sacred Rites, in an audience on the thirtieth day of January, 1879. His Holiness approved the response of the Most Eminent Cardinals regarding the proposed question, and confirmed it with his authority, ordering it to be made public.

D. Card. BARTOLINI, Prefect, Sacred Rites Congregation.

L. © S. Placidus Ralli, Secretary, Sacred Rites Congregation.

[*Latin ed. p. 516*]

516 A Synopsis of the Discussion Concerning the Right to Consecrate Altars and Churches Held by Titular Bishops. It is to be noted that, as is customary, those consulted, both the Masters of the Ceremonies and

Translated by churchlatin.ai, a product of Boyne Archives

the Doctors of Holy Canon Law, were asked for their opinions on this weighty matter. Some held that the right in question belonged to the Cardinal Vicar, while others maintained that it belonged to the Cardinal Titular. We present a brief summary of these opinions to our readers, so that they may better understand the gravity of the issues presented to the Holy Congregations and the manner in which they are resolved, with what doctrinal foundation.

THOSE PRESENTED IN FAVOR OF THE EMINENT VICAR.

The opinion of the Masters of the Apostolic Ceremonies. They stated that this particular question had never been treated; that there was no decree of the Holy Pontiffs on this matter, and that the practice of past centuries was unknown; therefore, it should be legally examined, by considering the nature and privileges of each Eminence, in order to reach a conclusion.

Cardinal De Luca, in Discourse 34, concerning the jurisdiction of Cardinal Bishops in Titular Churches, states that they possess episcopal jurisdiction, or almost episcopal jurisdiction, over the clergy and people. However, in practice, this has presented a serious obstacle to the spiritual administration of the Diocese of Rome, and this authority has been entirely abolished among the people, and severely restricted among the clergy. Therefore, since the Titular Bishops do not fully enjoy jurisdiction, nor do they have a separate territory, the Eminence Vicar, who holds the position of Ordinary of Rome, has that jurisdiction delegated to him in the Titular Churches, which is what is proper for Ordinaries in the Church of the Prelates, even though they are exempt.

Now, in law, it is certain that it pertains to the Ordinaries, concerning such churches...

[*Latin ed. p. 517*]

Concerning the right of consecrating altars and churches that are titular sees, 517, and the exercise of all episcopal acts. Hence, it is deduced that these functions pertain not to the Titular [Bishop], but to the Ordinary Vicar; and this applies even in churches that are titular sees: and this is made even clearer, because no document proves that the consecration of an altar was reserved by the Holy Fathers for the Titular [Bishop]. Although Cardinals enjoy jurisdiction in their own titular sees, this cannot disturb the hierarchical order in which each of them is constituted. Thus, it is forbidden for Cardinal Deacons to exercise the proper functions of Presbyters in their own diaconal sees, although the Presbyters are, in fact, the same; and for Cardinal Presbyters, even though they are Bishops by character, to exercise the proper functions of Bishops in titular churches. And therefore, by law, it is certain that Cardinal Deacons and Presbyters cannot consecrate altars in their own titular sees; because this is not permitted by the nature of the

Translated by churchlatin.ai, a product of Boyne Archives

Church itself, to which they belong. If they cannot do this by law, then they do not possess this jurisdiction by privilege; because, although in the work of Father Jerome Piati, all, even the smallest, privileges of Cardinals are listed, this one is not mentioned. Indeed, in number 22, it is read: "In practice, it is certain that Ordinary Cardinals do not have, in titular churches, whether secular or regular, those things that belong to the order, even if they are Bishops." Because it pertains to the Ordinary of the place to consecrate altars in churches of Prelates who enjoy an exemption, it would be necessary for the Supreme Pontiff to accept this function in a Brief by which he delegates jurisdiction to the Ordinary Vicar; otherwise, if this is not accepted, it necessarily devolves to the person who performs the acts of the Holy Order of Episcopacy. And it is false that jurisdiction alone is sufficient to perform, or to entrust, this action; and that, to perform it, the Holy Order is required without an apostolic indult, and that, to entrust it, full and free jurisdiction must be present. But Ordinary Vicars do not lack such an indult, and in their own churches they do not possess full and free jurisdiction: therefore, the jurisdiction they possess is not sufficient, either to complete, or to entrust to others, this action.

[*Latin ed. p. 518*]

518 Concerning the right of consecrating altars and churches: The consecration of an altar is performed by the Ordinary Bishop of the place in which that church is situated; for such churches, in all spiritual matters, are subject to him, as is taught in chapter 7 concerning religious houses; and the same is presumed in chapter 1 of that title. The Bishop may complete this ceremony himself, or he may depute another Bishop to perform it. This rule applies also to churches of Regular and exempt Orders, unless they have a special indult, which is rarely granted by the Apostolic See, as stated by Benedict XIV, *De Synodis*, book 1, chapter 5, number 4; or unless those churches belong to no diocese, in which case the church may be consecrated by any Bishop, if requested by the Abbot. Cardinal Petra, Volume IV, concerning Constitution VI, Urban IV, number 48. This arises because such an Abbot is considered the Ordinary territorial and a semi-bishop in that territory, abstracted from any other diocese. Therefore, this last exception pertains to the general rule which prescribes that churches and altars must be consecrated by the diocesan bishop of the place. The Council of Trent, Session VI, chapter 5, indirectly but clearly confirms this rule: no Bishop is permitted, under any pretext of privilege, to exercise pontifical functions in another diocese, unless with the express permission of the Ordinary of that place. Gallemart states that religious houses, even those of cardinals, are also included under this prohibition, and therefore no one holds a privilege of dignity. OPINION OF A LEGAL EXPERT. Furthermore, in order to conclude that the consecration of a church or altar pertains to a titular see, it must also be demonstrated that the titular is

Translated by churchlatin.ai, a product of Boyne Archives

a prelate with a territory abstracted from any other diocese, and enjoys a jurisdiction quasi-episcopal. But whatever may be the case concerning past times, in the present situation, both of these are false. It is said that cardinals formerly had a separate territory with a clergy and people subject to them; but now, such a territory no longer exists, and the jurisdiction derived from it has ceased. Furthermore, although Sixtus V, in the *Constitution Religiosa* issued on April 1st, 1589, decreed that cardinals have a jurisdiction quasi-episcopal in their titular sees; nevertheless, their jurisdiction...

[*Latin ed. p. 519*]

Regarding the right to consecrate altars and churches belonging to titular sees, this right, as pertaining to a bishop, was removed by the Constitution of Innocent XII, the Roman Pontiff. From this, it follows that, with the cessation of jurisdiction over the people, and concerning the clergy, the Titular sees only observe, without the exercise of judicial power, whatever offenses are committed by Canons and Clerics in the service of the choir and the sacred place; concerning other offenses, however, they do not observe them. This jurisdiction cannot, in any way, be considered quasi-episcopal. Therefore, according to Pitonius, in *De Controv. Patron.*, section 41, number 31 and following, concerning the aforementioned constitution, he wrote: "Indeed, this Constitution silences the question regarding the jurisdiction claimed by Titular Cardinals, precisely because it restricts their power to those matters that pertain to the service of the Church, with such precision that it excludes any other form of jurisdiction." Therefore, it is concluded that, since the Cardinals do not have a separate territory, nor do they exercise a quasi-episcopal jurisdiction, they cannot be considered as diocesan or quasi-diocesan, to whom it pertains to consecrate churches, or to delegate other bishops to do so. On the other hand, these churches are located within the territory, or land, where the Ordinary resides, namely the Pontifical Vicar of the City, who has the power and authority to exercise not only jurisdiction, but also order. Therefore, applying the canonical rule, it pertains to him to consecrate churches and altars. This has been established for the benefit of the Titular. He explicitly stated that the consecration of the altar in titular churches pertains to the Titular himself, reasoning as follows: The use of pontifical rites pertains to the power of jurisdiction. But the power of jurisdiction in the titular church pertains to the Titular: therefore, the use of pontifical rites in the titular church belongs solely to the Titular Cardinal. But churches and altars cannot be consecrated without the use of pontifical rites: therefore, the consecration of the altar is the *VOTUM PRAEFECTI CAEREMONIARUM APOSTOLICARUM*.

[*Latin ed. p. 520*]

520 Concerning the right of consecrating altars and churches, the consecration in titular churches pertains to the Titular Bishop. Proceeding to the

Translated by churchlatin.ai, a product of Boyne Archives

individual parts of the argument, the author states: "The use of pontificals pertains to the power of jurisdiction." Without mentioning canonists, this is easily demonstrated by the Council of Trent, Session IV, Chapter 3: "No Bishop is permitted, under any pretext of privilege, to exercise pontificals in another diocese, unless with the express permission of the Ordinary of that place." This decree not only refers to the conferring of orders, but also to other acts that involve some pontifical authority, as demonstrated by Giraldi in his commentary on this decree. He states: "Under the name of pontificals, besides the conferring of orders, are included the first tonsure, consecrations of vessels, churches (and consequently, altars), virgins, chrism, and confirmation, etc." Therefore, it remains proven, according to the principle of law, that the use of pontificals is an act of jurisdiction, as stated in *Pandectae*, Decision 30, number 3, and that it pertains to the power of jurisdiction.

However, the power of jurisdiction in a titular church pertains to the Titular Bishop. It is known that Titular Cardinals have episcopal jurisdiction in their own churches, according to the Constitution of Venerable Paul IV, and quasi-episcopal jurisdiction according to the Religious Constitution. This is confirmed by Jerome Manfredi in his book *De Cardinalibus S. R. E.*: "Presbyters who are Cardinals can perform all those things that pertain to true Bishops in their titles." And Cardinal Albici, in his dissertation on the jurisdiction of Cardinals in their titles, to the question "Whether Cardinals have jurisdiction in their titles by common law or only by custom," responded: "It must be resolved that they have it by common law, and not by custom," citing Barbosa, according to whom "The Vicar of the Pope has no jurisdiction in the titular churches of Cardinals," because Cardinals, even though not Bishops, have episcopal jurisdiction in their titles. This is also taught by Ferraris, *V. Cardinalis*, number 12, and by Cardinal De Luca, on jurisdiction.

[*Latin ed. p. 521*]

Of the right to consecrate altars and titular churches, 521, Discourse 34. "Cardinals in their 'titles' are independent from the 'Bishop of the City,' represented by the Papal Vicar," and "the 'titles' of Cardinals are compared to Episcopal Churches... not because it is said that a jurisdiction, as if episcopal, follows, but because it cannot be complete and of every kind, since it stands alongside it; it is real, but it is better to call it so, for the distinction of those who are Bishops." And indeed, in the Apostolic Letters sent to a Cardinal for his title, it is written: "And We appoint you to the Church... as a Cardinal Priest, fully entrusting to you the care, governance, and administration of that church, both in spiritual and temporal matters." Therefore, the jurisdiction that Cardinals exercise in their titles is true and certain; and to this positive jurisdiction, attached to their Titles, are conferred benefits, processions are held with the Roche, blessings are

Translated by churchlatin.ai, a product of Boyne Archives

imparted to the people, indulgences of 100 days are granted, authentic relics of saints are displayed, and they use the throne in functions; these things do not pertain to any Cardinal, except the Cardinal Vicar, notwithstanding his most ample ordinary jurisdiction, which is granted to him. From the jurisdiction that is granted to titular Cardinals, it follows that the titular church cannot have another superior, except the same titular Cardinal; otherwise, as Cardinal De Luca indicates, an absurd result would arise, "namely, a double monstrosity, namely, two heads in the same body, or two men over one woman..." Hence, in national churches, there is no title: because they mostly have a Cardinal as their protector. Therefore, the Master of Ceremonies continued, if the use of pontificals pertains to the power of jurisdiction; if the power of jurisdiction in the titular church pertains to the titular Cardinal, then, as far as it is denied that titular Cardinals have true and complete jurisdiction, the Apostolic Letters would be lacking in meaning. Hence, it must be said that Innocent XII, by the Constitution *Romanus Pontifex*, did not intend to abolish the jurisdiction that was formerly conferred upon Cardinals in their Titles, and which is still conferred upon them today by Apostolic Letters, as has been said. But the object of that Constitution was to remove only the contentious jurisdiction from the titular Cardinals.

[*Latin ed. p. 522*]

522 Concerning the right of consecrating altars and churches, as has been demonstrated; from these two principles of canon law, it follows that in a church holding a titularity, the use of pontificals pertains to the titular Ordinary. But altars cannot be consecrated without the use of pontificals. This proposition is so clear that it requires no further proof; and therefore, the argument remains that the consecration of an altar in titular churches pertains exclusively to the titular Ordinary. The same Master also states: the demonstration of his proposition, supported by the principles of canon law, is aided by valid evidence. Indeed, while no example can be adduced of the consecration of an altar in a titular church having been performed by the Ordinary, except in the case of a vacant titularity; on the contrary, many consecrations of altars in titular churches have been performed, even in our own times, with the consent of the titular Ordinaries. And the Ordinary, regarding these matters, has not complained of a violation of his jurisdiction. But someone objects: from these facts, it arises that the titular Ordinary cannot consecrate the altar of his titular church; because, just as a Cardinal Deacon cannot exercise priestly functions in his deaconry, so a Cardinal, by order of the Presbyterate, cannot exercise episcopal functions in his titularity, to which the consecration of an altar belongs. But this objection is answered; an argument of deduction cannot destroy the proof that arises from the very nature of the law. However, the facts adduced confirm most strongly that the jurisdiction in a titular church (it is to be noted here that

Translated by churchlatin.ai, a product of Boyne Archives

we are speaking only of the consecration of an altar, and not of the use of holy oils, or the faculty of hearing confessions, etc.) belongs entirely to the titular Ordinary, who alone, in the cases mentioned, and independently, has entrusted the consecration of altars to the Bishop. Therefore, if the principle "he who acts through another seems to act through himself" is true, then it is also true that he who has the power to entrust the consecration of an altar to a Bishop, can consecrate the altar himself, insofar as he is a Bishop. And therefore, the doubt always remains.

[*Latin ed. p. 523*]

Concerning the right to consecrate altars and churches, the Master of Ceremonies, citing section 523, which asks, "Can a Cardinal Priest consecrate an altar in his titular church?" stated: A Cardinal Priest cannot perform episcopal functions if he lacks the episcopal character, but in this case, he must delegate these functions to another Bishop, to whom real jurisdiction has been conferred over that territory by apostolic bulls. However, if the Cardinal, by virtue of his order, also possesses the episcopal character, then the consecration of the altar in his titular church pertains to his full jurisdiction, and certainly not to the Eminence, the Vicar of Rome. Thus, if Eminences were deprived of this right, their episcopal, or quasi-episcopal, jurisdiction, which is conferred upon them by apostolic letters, would be reduced to nothing; and they would be permitted to do nothing other than place their coat of arms and their own image on the door of the titular church.

When asked about this matter, he said: After careful consideration from all sides, the opinion that grants this right to the Eminence in the titular church seemed to me to be more in accordance with the sacred canons. For the consecration of a church or altar requires a double power: that of order, and that of jurisdiction. Therefore, whoever wishes to consecrate an altar or a church must, in addition to the power of order, also, by right, exercise his jurisdiction over that church or altar. By ordinary and common law, the consecration of an altar and a church, considered in terms of power, belongs to the Bishop (Reiffenst. j decr. tit. 40 de consecrat, eccles, vel altaris n. 22). "Speaking of common law, only the Bishop 'can and must' consecrate an altar..." (Common and certain rights, canon 4, dist. 68). However, the consecration, considered in terms of the act, depends on the power of jurisdiction. Those things which strictly belong to the order cannot be delegated, nor granted by any privilege; but the power to consecrate an altar can be delegated and granted by some privilege (Reiffenst. loc. cit. n. jj). "By privilege or commission from the Pope, even a simple priest..."

This power is attached to the episcopal order by human law alone, as

Translated by churchlatin.ai, a product of Boyne Archives

Reiß states (loc. cit. n. 26).

[*Latin ed. p. 524*]

524 Concerning the right to consecrate altars and churches: "Altars can be consecrated by gifts." Conversely, however, if anyone, having received the Episcopal character, or having been granted a special privilege, consecrates a church or altar within another diocese, without the permission of the diocesan bishop, he is punished with suspension from the exercise of his pontifical functions for an entire year. Council of Trent, Session 6, chapter 2, and Session 14, concerning reforms. Therefore, with regard to jurisdiction, the consecration pertains to that person who possesses Episcopal or quasi-Episcopal jurisdiction over the church or altar being consecrated. Consequently, based on this principle, the present question is limited to this: whether Cardinals have Episcopal or quasi-Episcopal jurisdiction in their titular churches. Once this is established, any controversy will be resolved, and it will be easily determined to whom the consecration, in our case, should pertain. However, Pope Paul IV, in his Constitution 5, expressly calls the jurisdiction of Cardinals in their titles "Episcopal"; Pope Sixtus V, in his Constitution 5, calls it "quasi-Episcopal," saying: "The religious offices of the Holy Pontiffs, our predecessors, were instituted long ago... so that to the priests of the Holy Roman Church, designated by a certain church title in the city of Rome, as if they were of their own proper dioceses, and to the deacons, regions of the city were assigned for the propagation and preservation of the Christian religion." This institution is still observed to this day, so that, besides the six bishops who preside over certain cathedrals in the vicinity of the city, each priest and deacon Cardinal is entrusted with his own church in the city, namely, the titular church and the deaconry, along with their clergy and people, and with quasi-Episcopal jurisdiction for governing and administering both spiritual and temporal matters. In agreement with this, Honorius III, in Chapter His, concerning majority, and Pope Leo X granted to the friars of the Order of Minorites who were going to the Orient, and Pope Paul III granted to the priests of the Society of Jesus, that in the most remote places among the infidels, where there is a lack of bishops, they may consecrate altars. Rodríguez, volume 1, response 99, question 28, article 2.

[*Latin ed. p. 525*]

Concerning the right of consecrating altars and titular churches, sections 525 and following, it is likewise established that Cardinals, in their titles, possess episcopal jurisdiction. The Doctors have followed the authority of the Holy Pontiffs in this matter. Fagnanus, in the aforementioned chapter, note number 15, states: "Cardinals possess 'episcopal jurisdiction' in their title, and in the churches subject to it, as this text is accustomed to be cited... and generally, the Doctors." Gonzalvo, in the aforementioned chap-

Translated by churchlatin.ai, a product of Boyne Archives

ter, teaches: "Presbyteral Cardinals possess all jurisdiction in their titles, or in the churches." Cardinal De Luca, in Disputation 34, affirms: "That Cardinals possess the right of a bishop in their titles." This is consistent with the decision of the Rota in Rome concerning burials, February 20th, before the Most Reverend Pirólo, in sections "Huius" and "Et utrisque." This can also be derived from the diploma granted to each Cardinal; Cardinal Bizzarri, in his collection, page 69, note 2, concerning the Roman concession for burials. For the Doctors argue from these words that episcopal jurisdiction belongs to Cardinals in the churches of their titles. And Fagnanus, in the aforementioned location, note 18: "However, this conclusion proceeds not only for presbyteral Cardinals, but also for Deacons, namely that they, in their titles, and these, in their diaconal offices, possess a jurisdiction almost like that of a bishop, as is expressed in the Constitution of Sixtus V, which begins 'Religiosa'." And all the Doctors agree that Cardinals, even those who are not bishops, exercise full episcopal jurisdiction in the churches of their titles. From this full jurisdiction, Bizzarri, in the aforementioned location, concludes that, besides the titular Cardinal in the church of his title, no other person can possess superior jurisdiction; otherwise, as Cardinal De Luca states in Disputation 54 concerning jurisdiction, "we would fall into absurdity, namely, of giving a duplicate authority to two heads in the same body, or to two men over one woman." Furthermore, it follows that no Vicar of the Roman Curia can possess jurisdiction in those same churches, as De Luca states in Disputation 34 concerning jurisdiction. Therefore, from what has been said, it is clear that the jurisdiction of a titular Cardinal is truly episcopal, and that it is full, so that it excludes the jurisdiction of any other; it is also established that Cardinals in their...

[*Latin ed. p. 526*]

526 Concerning the right of consecrating altars and titular churches: To possess fully the rights of a bishop, to hold the place of bishops, and to be entirely free from any dependence whatsoever. From these principles it follows that the consecration of a church, or altar, pertains exclusively to a titular bishop, and that the Cardinal Vicar of Rome cannot claim this right for himself by any agreement, unless it must be said that all expressions used by the Popes and Doctors on this subject are vain and frivolous. This argument is strengthened by the Constitution *Non mediocri* of Eugene IV, in which it is defined that the dignity of the Cardinalate is greater and more sublime than that of a bishop, an archbishop, or a patriarch. It does not, however, contradict the fact that Cardinals are of lower rank than bishops; for, as Eugene IV declared in the aforementioned Constitution, if the matter concerns prerogatives and privileges, the reason of dignity should rather be considered than that of rank. With this established, it follows that titular Cardinals cannot be equated with exempt prelates, who do not have a territory; for no one has ever said that these prelates possess

Translated by churchlatin.ai, a product of Boyne Archives

episcopal or quasi-episcopal jurisdiction. However, it seems that a titular Cardinal may be improperly assimilated to a prelate *nullius*, who has a territory separated from a diocese, and in which he exercises full and complete jurisdiction. This is confirmed by Constitution 3 of Sixtus V and by Cardinal de Luca, *Discipline* 34, on jurisdiction, paragraph 66, which states: "These churches have been assigned to them as if they were the particular dioceses of each, with a territory separated from the Diocese of Rome..." Therefore, it is certain that these prelates can perform the rite of consecration themselves, if they enjoy such a privilege, or, if they are deprived of it, they can perform the same act through another, who possesses such authority, as de Luca states in *Discipline* 34, on jurisdiction, paragraph g. Because these prelates, besides all that pertains to voluntary and contentious jurisdiction, and indeed always excluding the Bishop, possess all that pertains to the order of bishops: for they can appeal to any bishop, as stated by Petra in *Commentaria* to the Apostolic Constitution 3 of Innocent IV, section 1, paragraph 29 and the two following paragraphs, and by Pignattelli in *Consultationes Canonicae*.

[*Latin ed. p. 527*]

Regarding the right to consecrate altars and churches, see volume 7, consultation 8, paragraphs Sç, po, and 102. Therefore, it follows that a Cardinal holding a titular see, whether by his own authority, if he possesses such a faculty, or through another, can proceed with the consecration of an altar, and that the Cardinal Vicar of Rome cannot, by any means, add this right to himself. The most distinguished Doctors teach the same, which has also been demonstrated by the argument of induction; namely, that Cardinals holding titular sees can perform all the functions of the Episcopal Order within their own sees, and that when these titular Cardinals lack the Episcopal character, they can delegate others to perform these same functions, as stated in Felino, concerning this matter, chapter. These principles, once established, give rise to another argument in support of the thesis that is to be demonstrated. It is well known that the rite of consecration is among the pontifical functions. However, according to the Council of Trent, Session 6, chapter 5, concerning reforms, under penalty of censure, Bishops are prohibited from exercising pontifical functions in the jurisdiction of another, unless with the express permission of the local Ordinary. And therefore, since titular Cardinals exercise full and complete jurisdiction within their own churches, it follows that the Cardinal Vicar, without any special privilege granted to him, cannot exceed the boundaries of another jurisdiction to perform pontifical functions. Furthermore, from what has been stated, it is clear that titular Cardinals' sees are not merely places that are exempt, but rather, they are certain territories, separated from the diocese, although not materially, but in some intellectual way, from which the jurisdiction of any Ordinary is entirely excluded.

Translated by churchlatin.ai, a product of Boyne Archives

It has been expressly and specifically reserved for the Cardinal Vicar of Rome to administer the sacrament of Confirmation and to confer the sacred orders; which the titular Cardinals cannot do within their own sees. However, upon careful consideration, this exception confirms the general rule; namely, that all and singular acts of jurisdiction belong to the titular Cardinals, except those that have been expressly and specifically excluded. These two exceptions were made, perhaps for prudential reasons, to avoid too much variety in jurisdictions, as stated by de Luca, in the aforementioned place, paragraph 17; but the consecration of an altar was not excluded. From the context of the Constitution of Innocent, it is clear that the rights and privileges of titular Cardinals have not been diminished. For the Pope, in...

[*Latin ed. p. 528*]

Regarding the recitation of the "Confiteor" in the choral office, three doubts arise. In the distinguished Collegiate Church of Saint Michael at Lucen, a custom has prevailed from time immemorial, whereby, whenever confession is made during the choral office, the Hebdomadarius, bowing to the Dean Prelate, who holds the first and most prominent place, says "Tibi Pater" and "Te Pater," and likewise both choirs repeat the confession: but the Dean, when performing the office and making confession together with the choir, says "Vobis fratres" and "vos fratres." Now, the Reverend Lord Eugenius Nanninius, the modern Dean and Ordinary of that Collegiate Church, has doubted whether such a custom can legitimately continue, and has presented the following doubts to the Sacred Congregation for a suitable declaration, namely:

I. Whether, when the Ordinary attends the choral office, the Hebdomadarius ought to say "Tibi Pater" or rather "Vobis fratres" in making confession? DOUBT.

II. Whether the choir ought to say the same, bowing to the Prelate or the Hebdomadarius? DOUBT.

III. Whether the Ordinary ought to say "Tibi Pater" to the Hebdomadarius, or rather "Vobis Fratres"?

Furthermore, the same Sacred Congregation, upon hearing the report of the undersigned Secretary, and considering the opinion of another from the Apostolic Ceremonial Constitutions, desired nothing other than to suppress the contentious jurisdiction of particular tribunals and judges, as has been said before. And therefore, it cannot be proven that the faculty of consecrating altars has been taken away from the titular bishops by the decrees and constitutions of the Holy Pontiffs. Present practice also indicates this, since, through the delegation of titular bishops, many altars have been consecrated, even in our own time, by bishops called to that purpose by the titular bishops themselves. Now, however, by the aforementioned decree, all question is removed, because it is the most important thing: namely,

Translated by churchlatin.ai, a product of Boyne Archives

that the consecration of altars in churches belongs to the titular bishops themselves.

[*Latin ed. p. 529*]

On the 529th day, the Masters, having considered the proposed Doubts I, II, and III, decided that the ceremonial practices of the Bishops ought to be observed, and therefore, the established custom should be abolished. And thus, it was decreed and ordered to be observed. May 25, 1878.

Fr. T. H. M. Cardinal MARTINELLI, S.R.C., Prefect.

P. Ralli, S.R.C., Secretary.

DIVIONEN.

Decree of Beatification and Canonization of the Venerable Servant of God, Benignus Joly, Canon of the Church of Saint Stephen in the City of Divionensis.

Since, at the beginning of the preceding year, the Sacred Congregation of Rites, by virtue of the special indulgences granted to it by the Most Holy Pope Pius IX, had already been empowered to proceed in the same Sacred Congregation Ordinary, without the intervention or vote of Consultees, regarding the Fame of Holiness of life, Virtues, and Miracles in general, concerning the aforementioned Venerable Servant of God, at the request of the Reverend Father Fr. Vincentius Ligiez, a Priest of the Order of Preachers, appointed as Postulator of this Cause, and with the Most Eminent and Reverend Lord Cardinal Ioannes Baptista Pitra, Promoter of the same Cause, the following question was proposed for discussion at the Ordinary Meetings of the Sacred Rites held today in Vaticanum: "Does it appear that the Apostolic Process constructed with authority in the Court of Divionensis concerning the Fame of Holiness of life, Virtues, and Miracles in general, of the aforementioned Venerable Servant of God, is valid and relevant, in the case and for the purpose under consideration?"

The Most Eminent and Reverend Fathers entrusted with the preservation of the Sacred Rites, after mature deliberation, having heard the testimony and examined the Acts, volume XI, page CXXXI, 34.

[*Latin ed. p. 530*]

530 Division. The Reverend Father Lawrence Salvati, Promoter of the Holy Faith, was of the opinion that the answer should be: "Affirmative." On December 7, 1878. These matters, faithfully reported by the undersigned Secretary to His Most Holy Lord Leo XIII, Pope, were approved and confirmed by His Holiness, the Sacred Congregation having ratified them on the 19th of the same month and year. D. Cardinal BARTOLINIUS, Prefect of the Sacred Roman Rota. L. © S. Piae. Ralli, Secretary of the Sacred Congregation. FROM THE SACRED APOTOLIC PENITENTIARY. On the occasion of the recently proclaimed Jubilee, certain doubts have been presented to the Apostolic See by some local Ordinaries. To resolve

Translated by churchlatin.ai, a product of Boyne Archives

these doubts, the Sacred Penitentiary, by order and with the authority of His Most Holy Lord Leo XIII, Pope, declares the following: I. The fast prescribed for obtaining this Jubilee can also be fulfilled during the time of Lent, provided it is done on days not excepted in the Apostolic Letters, and that only food that satisfies hunger is used, with the prohibition of the use, as to quality, of any indulgence or privilege granted by the Bullae Cruciatae. II. To the faithful who, with Chapters, Congregations, Confraternities, and also with their own Parish Priest or Priest delegated by him, visit the churches processionally in order to gain the Jubilee, the Indult granted in the aforementioned Apostolic Letters to those same Chapters, Congregations, etc., can be applied by the Ordinaries.

[*Latin ed. p. 531*]

Declarations concerning the Jubilee:

531 III. It is not possible to satisfy the Paschal precept and, at the same time, to obtain the Jubilee, unless it be through one and the same Confession and Communion.

IV. The Jubilee, with regard to the plenary indulgence, can be gained twice or more times, by repeating the prescribed works twice or more; but only once, that is, only on the first occasion, with regard to the favors attached to the Jubilee itself, namely, absolutions from reserved censures and cases, commutations, or dispensations.

V. In this Jubilee also, without any exception, the resolutions of doubts issued by the Holy Penitentiary for the Ordinaries of Italy, dated June 1, 1869, shall have place. All contrary decrees notwithstanding.

Given in Rome, in the Sacred Penitentiary, on the 26th of February, in the year 1879.

ALIAE DECLARATIONES S. EIUSDEM POENITENTIARIAE.

SACRED TRIBUNAL

1 VI. For the purpose of fulfilling the prescribed visitations, chapels and oratories may also be designated, provided that they are dedicated to public worship, and in which Mass is customarily celebrated.

VII. Visitations instituted for the purpose of gaining the Jubilee, provided that they are carried out according to the prescribed number, may be arranged at the discretion of the faithful, either on one day or on several days.

A. Card. BILIO, Major Penitentiary.

Hyp. Can. Palombi, Secretary of the Holy Penitentiary.

1. Other declarations concerning the Jubilee can be found in Volume V,

Translated by churchlatin.ai, a product of Boyne Archives

page 28, Volume VIII, pages 266, 359, 485, 544 of these publications.

[*Latin ed. p. 532*]

LETTER FROM HIS HOLINESS, POPE LEO XIII, TO THE Most Reverend Cardinal MONACO LA VALLETTA, GENERAL VICAR OF ROME.

Most Reverend Cardinal,

In the month of June of the past year, it was necessary to write to you concerning the most grave danger to the faith and morals of Our people of Rome, due to the many avenues opened to incredulity and vice; among which, We lamented then as most disastrous, that the instruction of the Catechism was almost entirely excluded from the public schools. Now, We feel it Our duty to write to you again concerning a matter closely related to this.

E Domine, Oportuit Nobis ut anni praeterlapsi mense iunio ad Te, Eme Domine, literas daremus de gravissimo, in quo adducitur discrimine Populi Nostri Romani fides atque moralis, multiplices ob semitas, quae vitio atque incredulitate patefiunt ; inter quas exitiosissimam tunc temporis conquesti sumus, quod nempe catechismi documenta a scholis publicis eicierentur. Modo debitum Nos tenet, ut iterum Tibi scribamus de scholis Romae; quod

[*Latin ed. p. 533*]

Letter 533, connected with the first, and also of the highest importance, concerns the schools of Rome. It is well known, through painful experience, that in the war now waged against the Church, the enemies especially target the youth, with the manifest intention of forming the growing generations according to their own designs and of winning them over to their cause at an early age. Therefore, since all power in the governance of public affairs has been denied to the Church, and equal rights have been granted to every kind of religion and worship, it was also desired to remove public education from the vigilance and authority of the Church, which has always been the guardian and teacher of all knowledge; and everywhere free access was given to any teaching, even if it were atheistic or infected with heresy. You well know, Most Reverend Cardinal, that this method of educating the youth outside the benevolent influence of the Church was also introduced into the States of the Holy See, as they were gradually taken away from the legitimate rule of the Pope; indeed, without considering the particular circumstances, *subjectum, cum priore arcte coniungitur, quodque maximi est momenti*. Sad experience teaches us that the enemies, in the war now waged against the Church, especially target the youth, for the openly declared reason that they may form those very generations according to their own plans and may win them over to their cause at an early age. Therefore, since all authority of the Church has been denied in the governance of public affairs, and equal rights have been granted to every

Translated by churchlatin.ai, a product of Boyne Archives

religion and worship, it was also desired to remove public education from the vigilance and authority of the Church, which for centuries has been the guardian and teacher of knowledge; and everywhere free access was given to any teaching, even if it were impious or infected with heresy. And it does not escape you, Most Reverend Cardinal, that this method of educating the youth, without the benevolent cooperation of the Church, has also been introduced in the territories of the Holy See, as they were gradually taken away from the legitimate rule of the Pope.

[*Latin ed. p. 534*]

534 Letters reveal that, owing to certain special conditions and the singular character that Rome possesses in the eyes of all, as the Seat of the Vicar of Christ and the center of Catholicism, even here the door to the widest freedom was opened to error. Consequently, it happened that within these august walls, where formerly only the purest doctrine desired by the Church was taught, now, in the public schools, the Catholic catechism is scarcely tolerated for a few hours; and in those opened and maintained by Protestants, the minds of young boys and girls are imbued with erroneous doctrines, according to the heterodox mindset of those who teach them. For, from many well-known facts, it is clearly revealed that the enemies of the Catholic Religion have conceived a plan to widely spread the false principles of Protestantism in Rome; and taking advantage of the freedom granted by the laws, they direct, especially against Rome, efforts that were previously employed in various cities of the peninsula, and they seek to establish here a center of heterodox propaganda in Italy, under the powerful influences and with the aid they receive from abroad.

[*Latin ed. p. 535*]

Letters 535. This plan is intended to be carried out especially in schools and for the benefit of schools; which, for this reason, instead of diminishing over time, grow more and more each year through the efforts and resources of foreigners who, having come here, often open new ones, striving with every means to attract a large number of young people. Therefore, to those who feel the strongest incentives and the distresses of poverty, generous financial assistance is offered, and the means of meeting the many needs of life are made easier. With others, promises, rewards, flattery, and all kinds of enticements are lavishly offered. — Nor can we remain silent about the singular audacity that has been displayed, to the point of opening non-Catholic schools even under our very eyes, right near the gates of the Vatican, the venerable Seat of the Roman Pontiffs. — On the contrary, while such freedom is granted to heterodox schools, oblique, but highly effective, methods are employed to hinder the growth and development of Catholic schools. Indeed, there is no lack of sinister insinuations against the collection of funds, and here, a center is established for the propagation of heresy

Translated by churchlatin.ai, a product of Boyne Archives

in Italy, supported by substantial assistance and cooperation from abroad. This plan must be carried out especially in gymnasiums and through gymnasiums; which, rather than decreasing, increase each year through the gold and efforts of foreigners, who, having come here, often open new ones, striving with all diligence to attract a large number of young people. Therefore, generous financial assistance is offered to those who are most susceptible to the incentives of poverty; and the means of providing for the many needs of life are made easier. To others, promises, rewards, and all kinds of flattery are freely offered. And it is not to be concealed that such audacity has been reached that non-Catholic gymnasiums have been opened before our very eyes, near the Vatican itself, the venerable Seat of the Roman Pontiffs. But while such freedom is granted to heterodox schools, oblique, but highly effective, methods are employed to hinder the growth of Catholic schools. Indeed, there is no lack of tortuous arguments.

[*Latin ed. p. 536*]

536 Letters [are being written], neither with special rigor, nor with threats, to dissuade parents from entrusting their children to sincerely Christian teachers. We shall not fail, Most Reverend Cardinal, to demonstrate how contrary to public prosperity and the common good is the education that is sought today, which is not informed by the spirit of Christianity. For everyone sees to what extremes society will be led, allowing a generation to grow up within it, devoid of Christian teachings, indifferent to the practices of religion, and lacking firm principles of morality. The lamentable examples that are already present foreshadow even worse things to come. We merely wish to observe how poorly, even in this regard, the dignity and freedom of the Roman Pontiff have been considered, after he was deprived of the dominion of his states. Indeed, our condition, as it results from the painful series of events that we touched upon above, is such that we are even compelled to see heresy, sheltered by public laws, freely raising its platform, without any insinuations, nor special rigors, nor threats, preventing our own parents from believing that their children should be entrusted to truly Christian teachers. It is not necessary, Most Reverend Lord, to point out how the education that is now being pursued is contrary to public prosperity and the common good, since it does not receive its proper form from the spirit of Christianity. For whoever sees to what point society will arrive, allowing a generation to grow up within it, devoid of Christian teachings, indifferent to the practices of religion, and lacking firm principles of morality, will understand. The lamentable examples that are already visible make us foresee that the future must be even worse. However, it is fitting to point out how poorly, even in this matter, the dignity and freedom of the Pontiff have been considered, after he was deprived of his civil authority. And in truth, our condition, as it appears from the sad series of events, as explained above,

Translated by churchlatin.ai, a product of Boyne Archives

is such that it compels us to see heresy, sheltered by the protection of the laws, freely raising its platform.

[*Latin ed. p. 537*]

Letters 537 permitted the use of effective means to silence him. — Now it is easily understood how improper it is that the city, in which the Vicar of Jesus Christ resides, should be impunely contaminated by heresy, and that it should become, as in pagan times, a receptacle of errors, a refuge for sects. Every argument persuades that in the holy City, consecrated by the blood of the Princes of the Apostles and of so many heroes of Christianity, celebrated since Apostolic times for its faith, and from which, as from a center, the life, the light of truth, and the example must spread throughout the world, the Religion of Christ must reign supreme and as a mistress; and the universal Doctor of the faith, the Vindicator of Christian morality, must have the free power to close the door to impiety and to maintain the purity of Catholic teachings. — Likewise, the faithful who, from every part of the earth, come to Rome as pilgrims, rightly expect to find in the City of their Supreme Head nothing but comfort for their faith, pasture for their piety, and splendid examples to imitate. They must therefore be highly esteemed, and it is our desire that, as effective means have been given to us, that he may be silenced. Therefore, it is easily understood how improper it is that the City, in which the Vicar of Jesus Christ lives, should be infected by heresy, and that it should become, like in pagan times, a receptacle of errors, and a refuge for sects. All arguments persuade that the Religion of Christ must reign as mistress and teacher in the holy city, consecrated by the blood of the Princes of the Apostles, and of so many heroes of Christianity, renowned since Apostolic times for its faith, and from which, as from its own center, life, the light of truth, and example must flow throughout the entire world; and there, the universal Doctor of the faith and the Vindicator of Christian morality must freely possess the power to prevent the entrance of impiety, and to preserve the integrity of Catholic doctrine. Also, the faithful of Christ, who come to Rome, traveling from everywhere, rightly expect to find in the city, where their Supreme Head dwells, nothing other than...

[*Latin ed. p. 538*]

538 Letters, filled with grief and indignation, upon seeing error creeping within it, and expanding with immense ruin of souls. It is easily understood, Most Eminent Cardinal, how bitter such a treacherous attack on the faith of Rome is to Our heart, and how it is impossible for Us to resign Ourselves to a state of affairs so contrary to the sentiment of Our dignity, and so incompatible with the sacred rights and duties of Our supreme power. Meanwhile, amidst the very grave difficulties in which We are surrounded, We have nothing left to do but to direct Our special concern to

Translated by churchlatin.ai, a product of Boyne Archives

at least mitigate the harshness of the evil and to prevent, as far as possible, its further spread. After mature reflection, therefore, without introducing any changes regarding the Institutes governed by the Holy Congregation of Studies, We have resolved to appoint a Commission of Prelates and Lords of the Roman Patriciate, which of all [institutions] shall be the head, unless [they] are the foundation of true faith, the pasture of piety, and examples of nobility to be emulated. Hence, they ought to be filled with great bitterness and indignation when they see error creeping within that city and extending itself to the great detriment of souls. It is easily understood, Most Eminent Cardinal, how much We are grieved by these insidious attacks on the faith of Rome; and how it is impossible for Us to endure a state of affairs that is contrary to the sentiment of Our dignity, and which cannot in any way be reconciled with the sacred rights and duties of Our supreme jurisdiction. Amidst these difficulties, We have nothing left to do but to direct Our solicitude to alleviate the harshness of evils, and to prevent, as far as possible, their spread. Therefore, after mature consideration, and without introducing any changes with regard to the Institutes governed by the Holy Congregation of Studies, We have decided to appoint a Commission of Prelates and Lords of the Roman Patriciate, which of all Catholic schools...

[*Latin ed. p. 539*]

Lettere 539. The Catholic schools, both elementary and those in which primary instruction is given, which are dependent upon Us, shall be under the highest direction and oversight in Rome, while nevertheless leaving the individuals and institutions that currently govern them; and it shall serve as a common center, from which, as far as present circumstances permit, all shall receive unity and increase.

The Commission which We appoint is composed as follows: President: Monsignor Giulio Lenti, Archbishop of Sida, Vicegerent of Rome; Members: Mons. Francesco Ricci Paraccelle; Mons. Carlo Laurenzi, Bishop of Amata i. p. i.; Monsignor Pietro Crostarosa; Marchese Giovanni Patrizi Montoro; Camillo de' Principi Rospigliosi; Pietro Aldobrandini, Prince of Sarsina; Secretary: Canon D. Augusto Guidi.

This Commission, aware of the many and serious difficulties that it will have to face, will have as its special task to ensure that the schools dependent upon Us, both those in which the elements are taught and those in which primary instruction is given, are under the highest direction and oversight, while nevertheless leaving the same individuals and institutions that currently govern them; and that it serves as a common center, from which, as far as circumstances permit, all shall receive unity and increase.

The Commission, chosen by Us, is thus constituted: President: R. P. D. Julius Lenti, Archbishop of Sida, in partibus infidelium, Vicegerent of Rome; Members: R. P. D. Franciscus Ricci Paraciani, Our Prefect of the House; R. P. D. Carolus Laurenzi, Bishop of Amata, in partibus

Translated by churchlatin.ai, a product of Boyne Archives

infidelium; R. P. D. Petrus Crostarosa; Marchese Ioannes Patrizi Montoro; Camillus and the Princes Rospigliosi; Petrus Aldobrandini, Prince of Sarsina; Secretary: Canon D. Augustus Guidi.

This Commission, duly considering the serious obstacles that it will have to overcome, will diligently strive to ascertain the condition of the aforementioned schools in various parts of Rome; to determine whether they are adequate in number and size to meet the needs and the multitude of young people of both sexes who wish to be educated;

[*Latin ed. p. 540*]

540 Letters should be procured to obtain an accurate knowledge of the state of the aforementioned schools in the various districts of Rome; to investigate whether, in number and size, they correspond to the needs and the multitude of young people of both sexes who present themselves to receive instruction; to determine which schools could be expanded and where new ones could be opened; and finally, to ensure that the schools are entrusted to suitable teachers, who, in addition to the proven goodness of their lives, possess the ability and the necessary qualifications to exercise the teaching profession with true benefit. The members comprising the Commission, in addition to ordinary meetings which they will hold before the President in order to understand each other and to consult on what is to be done, will also meet on several occasions within the year before Your Eminence, Cardinal, so that, through your counsel and your authority, the most appropriate measures may be adopted to overcome obstacles and to provide for the needs. Since, however, this struggle against error is primarily sustained by gold, which is lavishly poured out among a people reduced to a precarious condition, the success of this undertaking will depend, above all, on the availability of a large sum of money. Therefore, in order to reach this goal of the utmost importance, we have established...

[*Latin ed. p. 541*]

Letters 541, fortune; thus, the successful outcome of this endeavor greatly depends on having a plentiful supply of financial resources at hand. We intend to contribute generously, and annually, from Our own private funds to this most important goal; and since the preservation of the faith in Rome is connected with the interests of the entire Catholic world, We intend that the contributions of St. Peter also help to promote the flourishing of Our schools, to the extent that the needs of the universal Church will permit. Despite this, the special support of those who are sincerely Catholic (and in the City of Rome, thanks be to God, are still very numerous) will also be necessary, those who are concerned with the good of religion and the glory of God. We already know that most noble and illustrious families of the Roman Patriciate, with great merit before God, and with even greater honor, especially considering the serious difficulties

Translated by churchlatin.ai, a product of Boyne Archives

they must constantly overcome, have founded and maintain some schools with their own resources, where young people of both sexes receive the literary education appropriate to their station, and are instructed in the Catholic catechism and the practice of Christian virtues. Therefore, such noble souls, and all those who are guided by a good spirit, should—

[*Latin ed. p. 542*]

542 Letters, having been instructed in the Catholic catechism, and in the practice of Christian virtues. Now, souls so generous, and how many others there are, moved by a good spirit, to whom Providence has granted a more abundant share of earthly riches, upon recognizing the need to provide for Christian schools, cannot but aspire to the glory of providing us with the necessary means to maintain them. And in this glory, the Roman Clergy will not allow themselves to be surpassed by others. 11 The Catholic priesthood has always gone forward in every endeavor that redounded to the honor of God and the benefit of souls; and the glorious traditions of the Roman Clergy clearly attest how well it has always understood its sublime mission. Already, the Chapters of the Patriarchal Basilicas have placed their own offering in our hands; and we do not doubt that their example will also move others to do the same. We dedicate such offerings exclusively to this most exalted purpose, truly worthy of our Clergy; that is, to provide for the people of Rome, together with literary instruction, that Christian institution from which even civil life and the good of human society proceed.

[*Latin ed. p. 543*]

Letter 543: A literary instruction, that is, a Christian education, which is a fertile seed even for civilization and social well-being. For if not all can generously contribute money, they can nevertheless offer their services, either by reminding parents of the grave duty they have to raise their children in a Christian manner and to keep them away from everything that could harm their faith; or by themselves exercising the teaching profession in schools; or by teaching the catechism and breaking the bread of the divine word to the children. In this way, the Romans will show themselves worthy of their name, and they will also have the glory of emulating the zeal and generosity of Catholics from other countries of Europe, who, zealous for their ancestral faith, offer the world splendid examples of selflessness and sacrifice, so that Christian education may be preserved and protected in their schools. And you also, Most Reverend Cardinal, who exert so much and such diligent activity for the salvation of souls, do not cease to exhort all to strive with firm purpose, with eagerness, and with generosity of spirit to achieve the goal proposed; for – *Quod si ab omnibus praestari nequit, opera tamen omnium praesto esse potest; sive in parentum memoriam onus revocando quo gravantur, tum prolem christiana ratione

Translated by churchlatin.ai, a product of Boyne Archives

instituendi, tum removendi quidquid eius fidei detrimentum afferat; sive ipsi magisterium in scholis agendo, sive catechismum docendo et verbi divini panem parvulis frangendo. Tali ratione Romani, hoc nomine digni sese exhibebunt, gloriamque consequentur aemulandi zelum atque aliorum Europae populorum generositatem, qui de sua solliciti fide avita, nobilia praebent mundo magnanimitatis et sacrificii specimina, ut christiana institutio in suis scholis salva tectaque maneat. Tu quoque, Eike Domine, qui pro animarum salute magna solertique uteris sollicitudine, exorare ne cesses, ut omnes animo firmo, alacri, atque generoso adlaborent ad propositum adse-*

[*Latin ed. p. 544*]

Letters 544: For the days are evil, and we must not allow ourselves to be overcome by evil, but rather overcome evil with good. And now, concluding Our letter, we raise our eyes to God, beseeching Him through the intercession of the Immaculate Virgin, and of the Most Holy Apostles Peter and Paul, to fulfill Our desires, to remember the Holy City where the Chair of His Vicar stands, and to arrange better times for it. And we nourish the certain hope that, with the help of Heaven and through the zealous efforts of all the good, the endeavors of the enemies will be frustrated, and Rome will always preserve the precious treasure of its faith.

2. Under the auspices of heavenly favors, to You, Lord Cardinal, to the members of the Commission, and to all the faithful of Rome, We impart the apostolic blessing. From the Vatican, March 25, 1879.

LEO XIII.

1 Corinthians, V, 16. Romans, XII, 21.

[*Latin ed. p. 545*]

FROM THE HOLY CONGREGATION OF MATRIMONY. On the days of May 4th, July 20th, and September 14th, 1878. Ferdinand, born of a noble lineage, had scarcely reached the age of twenty-six when he fell under the subtle snares of a woman named Lucy, who sought to ensnare men. He entered into marriage with her in the city of B, so captivated by her infamous allure that he could not resist. But when he had nothing left of his paternal inheritance, he could not make any expenditures without obtaining them from his mother, the Countess V., who is exceedingly wealthy. As soon as the noble woman learned of her son's ruin, surpassing in masculine fortitude and constancy, and also in exemplary piety, she devoted herself entirely to his salvation. Therefore, in order to distract the young man from his harmful habits, seizing the opportunity that he had begun a diplomatic apprenticeship, she arranged for him to go to London, to a certain boarding house, subordinate to another boarding house established in the city of

Translated by churchlatin.ai, a product of Boyne Archives

B, whose president she had under her control. Thus, the mother sought to bring about her son's correction, without causing him to abandon his intended apprenticeship. Whether Ferdinand remained in London from May 24th, or rather, from the first day to June 29th, is not entirely clear. It is certain that Lucy, already pregnant, hastened to London. But the Countess, upon becoming more certain that the plague she wished to keep out of her house was growing in England, sent an electrical message by TELEGRAM. We have completed the exposition of this case with a more rapid pen, because two questions concerning the lack of consent and domicile in this matter are so entirely new and serious that the Most Reverend Fathers of the Holy Congregation have examined them three times before issuing a definitive judgment. Acts, volume XI, page 131, 35.

[*Latin ed. p. 546*]

546 Having sent for the president of the marriage bureau, he immediately recalled his son, who, on June 29th, having left his possessions in London, returned to his homeland with Lucy. In order to bring the erring son back to a virtuous path, his mother endeavored to have him dedicate himself to spiritual exercises, in a house of the Fathers of the Society of Jesus. However, Ferdinand, considering only his own desires, devised a plan to evade his mother's vigilance; and indeed, as soon as he left the religious house, he spoke with Lucy, and they decided to return to London, so that there they might celebrate the marriage, which was impossible, unless either his mother gave her consent, or he went through the legal process with three acts of submission. Therefore, in order to carry out his plan, and feigning a necessity to return to England to pay his debts and settle his affairs, Ferdinand returned to London on August 1st, which Lucy had anticipated. He paid the money owed to the landlord and gave the marriage license to the civil registrar, so that even the things that were required by English law would be fulfilled; and on the sixth day of the same month of August, he celebrated the marriage with civil formalities before a magistrate (Register). On the same day, he sent a letter to his uncle, to be shown to his mother, in which he announced the marriage in London. Barely five or six days after this warning to his mother, the young people returned to their homeland. Upon his arrival, Ferdinand appeared to be repentant, and, concerning the marriage contracted with civil rites in London, the secular magistrate, by his judgment, declared it null and void on September 14th, and he brought a petition to the lawyer L. to obtain a decree of nullity of the marriage. Then, the Count, with his mother's assistance, after giving a sample in law, was assigned to the Constantinopolitan legation, and set out for a new residence. However, when he arrived in Constantinople, on November 4th, he sent a public protest to Lucy, who was still there, against the judgment of nullity of the marriage that had been initiated. He also summoned her to his new residence. On the 21st

Translated by churchlatin.ai, a product of Boyne Archives

day of the aforementioned month of November, the civil court declared the marriage invalid on two grounds: namely, due to a lack of public...

[*Latin ed. p. 547*]

Marriage 547 cases, and due to the mother's lack of consent, without the triple act of submission required by law. In Constantinople, where Lucy resided with him, Ferdinand remained until September 1873, when, urged by his mother's solicitations, Lucy secretly moved to Paris. Then, Ferdinand returned. From that time onward, it can be considered certain that he no longer cohabited with Lucy, although she may have visited him occasionally. In the year 1874, Ferdinand, having learned that his mother had made supplications to the Ordinary, so that the question of the validity of the marriage contracted by his son with Lucy might be definitively settled by ecclesiastical authority, insisted that the matter be settled according to the procedures of canon law. The inquiry was duly undertaken, and the man, the man's mother, and Lucy were each subjected to examination three times. Two learned consultants were appointed by the Ordinary, who gave their opinion that the marriage was null. But just as the Ordinary was about to pronounce his judgment, Ferdinand wrote a letter in which he expressed doubts arising from his conscience, stating that although he had intended to contract a civil marriage, he was greatly concerned that, because of the oath he had taken, it might not be possible for him to be absolved before God. Upon receiving this letter, the Ordinary considered that the situation had changed considerably, as he himself openly declared, and on September 9, 1874, he pronounced his judgment, in which he declared that there was nothing to indicate the invalidity of the marriage, and therefore that the same marriage, although contracted illicitly, should be considered valid. In July of the following year, 1875, Ferdinand appealed the Ordinary's judgment to the Sacred Congregation. The Sacred Congregation decreed a new inquiry, which was initiated in the year 1876. In the meantime, in April 1876, Lucy contracted a second civil marriage with a certain Aloysius P. Subsequently, in order to comply with the will of the Sacred Congregation, in October of the same year, Lucy, Ferdinand's mother, and his sister underwent an examination on June 19, 1877; and separately, Ferdinand himself, in distant regions of America, before a Bishop.

[*Latin ed. p. 548*]

Marriage 548, of the city of F., having departed, was destined for a new mission by the Government to that place. Having completed all these matters, the case was presented. A summary of the arguments. The nullity of a marriage contracted in London was argued on two grounds: a lack of consent and a lack of domicile. It was stated that, considering the totality of the circumstances, it should be understood that the noble young man had not intended to enter into a marriage, but rather to indulge in illicit

Translated by churchlatin.ai, a product of Boyne Archives

loves, fearing that he would be exposed, and that he had sought to bind the woman with some kind of agreement, so that he might feel secure in his licentiousness, without, however, granting her any rights or dominion. In England, marriage is, by its very nature, precarious, being dissoluble by religion, by rite, by custom, or by various conditions. The Earl had deliberated on this; he had freely accepted the woman as his companion and his slave. However, when these considerations are compared with the sacred bond of the sacrament, divinely instituted, they are found to be infected with two vices: first, the absence of formal consent; and second, that even if consent were present, it was subject to a condition that rendered the marriage incurably null.

THIS IS WHAT FERDINAND'S ADVOCATE WAS ARGUING. It was evident that there was a lack of formal consent. Indeed, not every kind of consent is required in every act, but it must be of a kind that is fitting for the nature of the act. And although, in England, what they call civil marriage, by the teaching transmitted by the Most Holy Pope Pius IX in his allocution of September 27, 1852, cannot be a marriage unless it is also a sacrament at the same time; so that, because of consent and the sacramental nature, civil marriages are both true and right, and, because they are legitimate contracts, they are also sacraments. Nevertheless, because this presumption arises from the facts and from the mind of the person acting, and the act of the agent does not extend beyond his intention, the intention of the agent must be considered. Indeed, if the intention of the contracting party is that the contract be...

[*Latin ed. p. 549*]

Marriage 549: The Sacrament does not separate! Marriage is not, according to Sánchez, in *De Matrimonio*, book 2, chapter 10, paragraph 6. It is then doubted whether those who are faithful and contracting marriage can, by intention, separate the reason of the sacrament from it... if that will is truly the intention of separating, as far as it is in their power, the reason of the sacrament from marriage, and of celebrating only the natural contract, it must be said that it is not a sacrament, due to the lack of intention... and so I think, because, according to Christ's institution, the sacrament is inseparable from the marriage contract: therefore, the intention of not making the sacrament contradicts the legitimate intention of making the marriage, which is the contract; just as, on the contrary, he who intended to make the sacrament of marriage, but not the contract, would accomplish nothing: because, according to Christ's institution, these two are inseparably joined together. However, what can most contribute to nullity, both can conspire in the civil agreement of the parties. For they did not have in mind to do what the Church requires, and they entered into a contract only civilly, without a religious bond. This was the intention of the man, as can be deduced from the testimony of the same Ferdinand, both before

Translated by churchlatin.ai, a product of Boyne Archives

and after the Archbishop's judgment. Before the judgment of June 18, 1874, he himself testified: "I declare that, when I 'entered into marriage,' I had the express intention of doing nothing other than a civil marriage, which is the only one that I considered possible: that is, a marriage that would not bind me with any bond before God, until the blessing of a priest was added, which I hoped to obtain at some point. I was indeed certain that, until I obtained the blessing, it would be easy for me to free myself from such a bond by a simple civil judgment." Afterwards, questioned in the investigation, and under oath, he answered the same: "The cause that led me to contract marriage was no other than to create an obstacle for my mother, who wanted me to be separated from Lucy. I thought that a marriage begun only civilly, according to English law, which permits divorce in certain cases, would present a sufficient obstacle."

[*Latin ed. p. 550*]

550 These marriages, having been brought before the Ordinary, had reached the point where a judgment regarding the nullity of the marriage could be rendered, when he received a letter from Ferdinando, in which he stated that, spurred by the dictates of conscience, and because of the oath sworn during the celebration of the marriage, he greatly doubted that the marriage was, before God, indissoluble. Indeed, he had openly responded to the Ordinary, "Your letter has completely changed the state of affairs." However, this letter was once again, and a third time, clearly and explicitly retracted by Ferdinando. First, he stated, "I declare that the letter sent to the Ordinary in Rome, which I myself informed him I had sent, was intended to indicate that the marriage I contracted with Lucy was null, and was motivated by the passion to which I was attached to Lucy." Then, he also wrote to the Prelate of Rino, "I would have been reluctant to contract a marriage with Lucy according to the Catholic rite... I swear by God that I never intended that it would be an indissoluble bond." From these statements, it is clear that the Count did not intend to be joined to the Church, and it is superfluous to discuss the intentions of Lucy; for when the sacrament is corrupted on one side, it cannot stand on the other. However, she herself wrote two letters, one to the Count, and one to the Ordinary. In the first, she asserted, "I wrote to the Bishop to confess that I had never intended to have a marriage with you that would be religious." In the second, she stated: "I confess that I never intended to contract any kind of religious marriage with the Count." These statements are consistent with what Lucy testified when, in the Court of B, she was subjected to a final examination, and was asked, "If, when you contracted the marriage, it had been said to you that you would never have the power to divert [from the marriage], do you believe that you would not have consented?" And she responded, "I would have given my consent equally." From this conditional question and answer, it is clear that Lucy

Translated by churchlatin.ai, a product of Boyne Archives

did not have the condition of not being able to divert [from the marriage] before her eyes; otherwise, she would have responded that she entered into the marriage under that law, in order to contract a perpetual bond. And indeed, when the Judge questioned Lucy again:

[*Latin ed. p. 551*]

Marriage 551: "Was there ever an agreement between you that you would seek the blessing of a Catholic priest for your marriage, or at least that the Count had ever spoken about this?" She replied: "Before the marriage, this was never discussed; after the marriage, the Count said something." It was a grave error, in the eyes of the Church, to contract marriage, because then the mother would have admitted the validity of the bond. Furthermore, B. held firmly in her mind the opinion that there is a difference between civil marriage and religious marriage, and that just as civil marriage is not contained within ecclesiastical law, so too ecclesiastical marriage is not contained within civil law. Therefore, those who contract marriage before a lay magistrate, whether at home or elsewhere, are, in the opinion of all citizens, considered by B. to be far from the Church. Following this opinion, Ferdinando contracted a civil marriage in London, never having considered that Catholics there could also contract marriage religiously, while giving their consent to marry before a civil official. However, this was certainly the intention of the Count, who did not hesitate to write to the Ordinary: "I would never have believed, if it had been said to me at that time, that marriage could be contracted between Catholics before a heretic, who does not administer the sacraments of the faith." Another cause for nullity arises from a vice in the consent, due to a condition added to the stipulation regarding the marriage, which allows it to be dissolved at some point; for such conditions, which affect the essence of marriage, introduce a nullity. Thus, Gregory IX, in chapter 7 on conditions, states: "If conditions are introduced that are contrary to the essence of marriage, for example, if one says to the other: 'I will marry you, provided that you avoid having children,' or 'until I find someone else who is richer in honor or possessions,' or 'if you betray me for money,' then the marriage contract, however favorable it may be, is without effect; although other conditions added to the marriage, if they are shameful or impossible, should be considered as not added, due to their lack of favor." What most affects the essence of marriage is that which concerns the perpetuity of the bond.

[*Latin ed. p. 552*]

Marriage 552 diminished. Schmalzgrueber, book 4, part 2, title 5, paragraph 6 and following. Gury, moral theology, with the annotations of Anthony Ballerini, treatise on marriage, paragraph 752, and especially concerning the case of marriages celebrated before a heretical magistrate. Reif-

Translated by churchlatin.ai, a product of Boyne Archives

fenst., book 1, title 5, section 2, paragraph 48.

1. Regarding the existence of a condition, it must be understood that if no presumption favors the proof of the condition, it must be proposed in the very act itself; but if a presumption exists, it need not be. Coscius, on separations, book 1, chapter 1, paragraph 14 and following.

2. The case truly concerns a condition.

3. Other authors state this. The first, Schmalzgrueber, in the aforementioned passage, says: "A condition is considered to be contrary to the essence of marriage when it is contrary to the threefold good of marriage, namely, the good of procreation, the good of fidelity, and the good of the Sacrament. The third good requires an individual society of life, which is fully achieved in a marriage consummated between the faithful, through its elevation to the Sacrament. Conditions restricting the society of life to a certain time are contrary to the good of this Sacrament."

4. "Such is the resolutory condition: for since marriage, by its very nature, establishes an indissoluble bond, it follows that a condition that dissolves it after it has been legitimately contracted is contrary to it."

5. And Gury, in the aforementioned passage: "It is asked whether a marriage begun under a shameful condition is valid. Answer: No, if this condition is contrary to the threefold essence of marriage, namely: 1) the good of the Sacrament; 2) the good of fidelity; 3) the good of procreation. This would occur if the spouses, by entering into marriage, exclude procreation, fidelity in marriage, or the perpetuity of the marriage."

6. Reiffenst. confirms: "It is inferred from practice that marriages are contracted in the following manner and are therefore null... 'I take you as my spouse for a certain number of years, so that, should this or that circumstance occur or not occur, I may again separate or marry another,' as heretics often do, who, with this expressed condition, enter into marriage, so that one party may separate and the other may marry at will, if the other commits adultery, or if he converts from the heretical sect to the Catholic faith."

7. In the aforementioned passage, Coscius adds: "It is useful to add that, in chapter 16, it is approved with the authority of the Sacred Roman Rota that, even if this condition is not manifested in the act of marriage, it is sufficient to prove that the spouses intended it beforehand, and that they did not retract it before the marriage."

8. However, the same Rota, in printed decisions held by Ursay, seems to have a different opinion: for there it affirms that if the contracting parties have declared beforehand that they wish to enter into marriage under this or that condition, and neither before the priest and witnesses, in the act of contracting the marriage, have they expressed the same condition, the

Translated by churchlatin.ai, a product of Boyne Archives

marriage...

[*Latin ed. p. 553*]

Marriage 553: Circumstances favorable to the truth should be considered, even if they are not clearly proven. According to English custom, the Count and Lucy entered into marriage before an English magistrate. This marriage among heretics is a cloak of disturbance, by which, after satiety, freedom is regained. And since, according to the law of nations, the place governs the act, the contracting parties should have considered themselves to be entering into a marriage that was dissolvable by law. A very important presumption in this matter is derived from the woman's character and morals, which Ferdinand knew best. Finally, presumptions must yield to the truth, if Ferdinand, in the first judicial examination, declared: "I wanted to be free to abandon her if she behaved badly. If there had been no possibility of divorce under English law, I would have waited longer before entering into the obligation. This was my intention when I gave my consent." And in a second examination, when asked, "Did you truly reserve the freedom to dissolve the marriage in your mind when you gave your consent?" he replied, "That is so." Nor is it different in the third examination, where he stated, "I considered myself free if Lucy behaved badly." Nothing was done that would suggest that this young man had revoked these declarations in a letter sent to the Bishop, when he himself was about to pronounce judgment on the marriage. It is clear what should be thought of that letter, since he had declared it a hundred times before and after: "I considered the condition of regaining freedom to be necessary, because of the previous behavior of the woman to whom I was married." This intention of Ferdinand was known to Lucy, as can be seen from the records; although whether she knew it or not, nothing should be held against her for it. In this variety of opinions, I believe that this later opinion should prevail when circumstances concur that exclude a true, absolute, and perfect condition, and it should be limited in the case where such a condition exists, so that, considering the circumstances and the conclusive evidence, there is no doubt about the previous marriage, and when these circumstances concur, it is not appropriate or honest for the man to publicly declare this condition in the same act before a large crowd who often attend the celebration of the marriage, but it is sufficient to prove that it preceded.

[*Latin ed. p. 554*]

Marriage 554 states that, since the cause of marriage is the union of two individuals, a condition imposed by one of the contracting parties is sufficient to render the marriage null. This is testified by Cosci, *de separ.*, book 1, chapter 16, paragraphs 272 and following, and by Sánchez, *de matr.*, book 1, section 1, paragraph 3. The patron of Ferdinand invoked a cause that was entirely similar, in which the Sacred Congregation recognized

Translated by churchlatin.ai, a product of Boyne Archives

the nullity of the marriage; and then he briefly mentioned that marriages celebrated otherwise than in the presence of the proper parish priest are invalid according to the Council of Trent. Indeed, the law is violated, even if the decree of Tametsi has not been promulgated (as is certainly the case in England), provided that the parties contracted the marriage in the place of their domicile, or quasi-domicile.

It is now very clear from the entire process that, at the beginning of August, the young people did not go to London for any other reason than to contract marriage before the magistrate. Lucy testified before the judge: "Together with him, I went to London, and B. arrived a few days later. We were to return to London, but the Count, from the city of A., informed me by telegraph that his mother had called him back to separate us. The following day, he wrote me a letter."

A condition contrary to the end of marriage, imposed by only one of the contracting parties, more clearly invalidates the marriage, as the author Cosci states in the aforementioned work: "Indeed, this condition (of not cohabiting) ... as it is contrary to one of the principal ends of marriage, induces the nullity of the marriage," according to St. Thomas. And so it proceeds even in the case where one of the contracting parties is unaware that the other is contracting the marriage under the aforementioned condition. For, since the intention of the contracting party under that condition is not to contract a true marriage, but a fictitious one, it does not render any value to the same marriage, even if the other contracting party is unaware, and truly expresses his consent, as Sánchez, Castropal, Piton, etc., affirm. Therefore, there is no marriage, whether the condition is imposed by one party or by both; whenever one or both have protested that they will not contract marriage otherwise than under a condition contrary to the end of marriage, the same is invalid, provided that this condition is proven to have preceded, for subsequent consent given before the parish priest and witnesses is considered to have been given with the same mind and intention, even if this has not been repeatedly manifested in the marital act, unless it can be proven that it has been retracted. You have a synopsis of this cause in Volume IV, page 545.

[*Latin ed. p. 555*]

Marriage 555: "Three days after, he came to me, saying that he had proposed to take me as his wife, and therefore he needed to return to London to arrange all the necessary things; and that, once everything was prepared, I would be able to join him." And concerning Ferdinando: "When I departed for London on July 31st, I returned solely for the purpose of contracting marriage." And again, in the most recent discussion: "I returned in order to take a wife there (in London)." And indeed, four or five days after my arrival, the young men went to see a magistrate, and then, scarcely five or six days later, B. returned. But these marriages, given these circum-

Translated by churchlatin.ai, a product of Boyne Archives

stances, are evidently void, since the condition of domicile is lacking, which must precede the marriage. This was established by Benedict XIV in the well-known constitution *Paucis ab hinc hebdomadis* issued to the Archbishop of Goan on March 19, 1758, in which Urban VIII's definition was reaffirmed, concerning the following doubtful case: "What if the same inhabitants, both male and female, transfer their residence to that place with the sole intention of contracting marriage without a priest and witnesses?" The Most Holy Congregation gave the following answer: "If the domicile is truly transferred, the marriage is not valid." Therefore, the entire question hinges on whether the Count and Lucy had acquired a domicile in London before contracting marriage before the civil magistrate. But, since domicile or quasi-domicile are acquired by intention and presence of body, or by a long-standing residence and the intention of remaining there for the greater part of the year, it must first be investigated whether, for the sake of validity or nullity, a presumption should be made, or whether the burden of proof lies in demonstrating that the conditions of intention and residence were lacking. However, common jurisprudence teaches that, in clandestine marriages, a presumption of nullity exists. *Monacell. formul., leg. praef., tom. i, part. 2, tit. 16 form., n. 28. Tamburin, in expl. decal., lib. 8, de matrim., cap. 2, § 3 n. 13.*

[*Latin ed. p. 556*]

556. It is not valid to object that the marriage is null because a decree of nullity for a clandestine marriage was not pronounced under the laws of Trent, and because such a law does not exist in England. For this objection presupposes that hatred for clandestine marriages began with the Council of Trent, whereas, on the contrary, it is clear from the law of decrees (by which marriages in England are governed) that, although marriages were considered invalid, they were certainly forbidden by the Church and subject to penalties. Therefore, according to the old discipline, a presumption of nullity existed for clandestine marriages (Schmazgrueber, vol. 4, art. i, tit. 3, de cland. desp., n. 89 seq.). However, setting aside this point, it can be shown that neither *animus* nor *incolatus* are sufficient to establish validity in this case. For *animus* requires that the marriage be intended to be permanent, unless it is proven that the party intended to reside there for at least a significant portion of the year (Engel, de cland., desp., n. 2; Barbosa, annoi, in Conc. Trid., sess. 24, de R. c. i, n. 6; Antoine, Theol. moral., de matr., § 432, note i). But Ferdinand could not have had such an *animus*, nor could he have had it, given his brief stay in England. He began his stay at that residence on May 24th, or (which seems more likely) on June 1st; and he departed on June 29th of the same month; therefore, his stay did not exceed eight days over twenty, or, at most, six days over thirty. From the entire course of the proceedings, whether from the testimony of the Earl or of his mother, sister, or brother-in-law, it is clearly evident that he left

Translated by churchlatin.ai, a product of Boyne Archives

only because he was compelled by the will of his mother, B., and went to London. Indeed, regarding one who is compelled to go elsewhere, nothing can be presumed other than a desire to return. Therefore, in law, those who are sent elsewhere for custody or correction do not acquire a *domicilium* in that place, since, as testified by Benedict XIV (in instit. eccles. 33, n. 12), they expect nothing more than to return to their paternal home once their bonds are released. This interpretation of the law is confirmed by Monacell. Form. pract. suppl. ad vol. i, tit. 8, n. 10; Ursaya, discept. eccles., loc. 2, par. i, disc. io, n. 36; Ferraris, biblioth. voc. imped. matr., art. 2, num. 50; Giraldi, expos. iur. pont.

[*Latin ed. p. 557*]

Matrimonii 557, I, 2, sect. 22, no. 7; *Cosci de separ. thori*, lib. I, cap. 14, no. 42. It was fitting for this cause that Ferdinand did not know how long he would have to stay in London, and that he stated in the examinations, "I had not made any certain plans... I did not know how long I would remain in London." It was also fitting for this cause that he could not bear to stay in that city any longer, and that he sought employment elsewhere, as is evident from the letters he wrote to his mother and to a friend who lived in Paris. Furthermore, it could not have been the case that, for the sake of his office, Ferdinand intended to stay in England, either for a long or short time, because he was devoted to the service of the Legation, and he had obtained a temporary leave of absence in order to prepare himself for the examination, which he indeed underwent in the years 1872, in the months of March and August. Ferdinand did nothing that would have been required of him in his office. Whatever he may have said in the examinations, it is mixed with the allurements of women and the truth; but he spoke very clearly in the letters he sent to his mother while he was in London, in which he expressed his sole desire to return to her. Finally, it must be kept in mind that the two fundamental elements necessary for acquiring a quasi-domicile are completely lacking in this case. The first is that the intention to remain for the greater part of the year is not sufficient, unless the intention to abandon the previous domicile is added: *Barbosa, vota decisiva*, lib. 2, vol. 10, art. I, no. 8; *Ursaya, disc. eccles.*, tom. 2, part. I, disc. I, no. n; *Rota Neapolitana matrimonii*, 22 June 1703, § 6, *cor. Priolo*. For, as is said in law, it is not enough for someone to be a parishioner of a church simply by having a simple and physical residence, but, as the law says, an "ass's residence," but it is required that there be an intention to abandon the first domicile and to remain in the second, with which the quasi-domicile is immediately acquired, unless otherwise stipulated by some municipal law, as is the case now, and without which, it is not considered to have been acquired, even after a thousand years. But the second, a very important requirement for acquiring a quasi-domicile, is that both spouses, even after

Translated by churchlatin.ai, a product of Boyne Archives

a long time,

[*Latin ed. p. 558*]

558. If the marriage is celebrated in the place where the parties reside, and they depart from that place unexpectedly, it is evident that either the spouses intended nothing more than to enter into the marriage out of deceit, or that they did not intend to remain there from the beginning. Thus, Benedict XIV, in *Notit.* f. 13, tom. 2, n. 8, and also in the aforementioned constitution *Paucis abhinc*, etc., states: "It may be doubted whether, in order to acquire a quasi-domicile for the purpose of marriage, as we have said, not only a prior residence is required, but also a subsequent one for a certain period of time. However, since we observe that subsequent residence is considered by those authors who have treated this matter as a very important element, and since nothing about it has been prescribed by the Council Congregation in the definition mentioned above, we do not wish to decide anything new on this matter." It is established by documents that, five or six days after the marriage, B. returned; and this fact is sufficient to demonstrate the intention to abandon the first domicile, and to exclude a long-term subsequent residence after the marriage. Thus far, concerning intention. However, the second condition for a quasi-domicile is residence, in which, setting aside presumptions, material certainty must be followed; because, according to Sánchez, lib. 3, disp. 23, n. 2, "A domicile of residence is not acquired solely by the intention to reside, but by intention and fact, namely, by the residence itself." And given that investigations into intentions are often troublesome, the Supreme Pontiff Benedict XIV, in the case of those who visit the place and are not subject to the law of Trident, has established a term, after which a quasi-domicile cannot be admitted. This term, at least, is stated to be one month in the same constitution *Paucis abhinc*, in which it is read: "After these things, we believe it necessary to add something, so that it may be clear what is required to acquire a quasi-domicile. But on this matter, it cannot be answered in any other way than that, before the marriage is contracted, the person who contracts the marriage must have resided in the place where the marriage is celebrated for at least one month."

[*Latin ed. p. 559*]

Marriage 559 Therefore, the principal point of contention lies in whether the thirty-day period was entirely lacking in the residence of Lucy and the Count. Indeed, they are said to have taken up residence either on May 24th or June 1st, and their first departure from England occurred on June 29th of the same month. After exactly one month, they returned. It is therefore necessary to inquire in law: "Whether residence, in the sense of 'quasi-domicile,' must be continuous and never interrupted, or rather, whether it suffices if it is counted in any way, disregarding the intervals of absence."

Translated by churchlatin.ai, a product of Boyne Archives

In Roman law, continuity was required when a certain number of days was stipulated; it is clear from Ulpian, in fragment i, section g, concerning recognition. The thirty days must be considered continuous from the day of the divorce, and this is not useful. And Justinian, in section 16 of the Institutes concerning excuses, states: "Those who wish to excuse themselves do not appeal, but within fifty continuous days from the time they became aware of it, they must excuse themselves." This theory was followed by St. Rota in decree 6, number 5, part 18, volume 2, and in decision 05, number 4, part 4, Rec. The same opinion was held by Cardinal De Luca in "De Matrimonii Disputationibus," number n; and Menoch, in "De Arbitrariis Casibus," 86, number 13, who states: "Therefore, continuous residence indicates that a domicile has been established, and so think all."

Finally, responding to the proponent of the marriage bond, we found the words of Menoch and Cardinal De Luca to be worthy of consideration, which we now present to the eyes of our readers in this case. Menoch states in the aforementioned passage: "Therefore, continuous residence indicates that a domicile has been established, for we know that simple conversation and residence, without that continuity, do not make anyone a resident; libertus, section solo ff., concerning municipal matters, although Alcialus wrongly believes that mere residence constitutes a domicile. Therefore, continuous residence indicates that a domicile has been established; and so think all." And Cardinal De Luca states: "It is a more probable opinion, attributed to Frederick of Senis, council 254, which is followed by the Sacred Congregation, that for the purpose of marriage, mere residence is sufficient, without the necessity of an explicit or implicit declaration of intent, or a notable period of time, or other requirements that are required by law to establish a formal domicile with regard to other effects, provided that there is a continuous and formal residence in the parish, in relation to the previous residence; otherwise, if it is for the sake of recreation or for some other accidental reason, without abandoning the previous residence, and with a brief return to it, as explained by Fagnan."

[*Latin ed. p. 560*]

Marriage 560 demonstrates the necessity of continuous residence for at least one month prior to marriage, as evidenced by the vow of Emi of Tarquinia, who clearly stated: that for at least one month, as specified in the decree, the most wise Pontiff intended to offer nothing other than a certain presumptive proof in matters of doubt, regarding the true and sincere intention of remaining for the greater part, whenever there was no certainty of the mind. The term "vaga" is defined in title 3, paragraph 16 of the code as follows: those who wander, either because they have abandoned their domicile or because they have left their domicile for a specific place, as testified by Schmalzgrueber in book 4, paragraph 2. Neither the Count nor Luciam were vagi. For two things are required for someone to be con-

Translated by churchlatin.ai, a product of Boyne Archives

sidered a vagus: first, that they possess goods, but seek them elsewhere; second, that they intend to establish a domicile in that place. Sánchez de matr., book 3, section 23, paragraph 1; Zallinger, institutions of law, title 3, ecclesiastical book, book 1, title 2, section 14c; Reiffenst., book 4, page 86; Rosignol, on marriage, part 1, preliminary notes, 22, paragraphs 1 and following, all agree with this. On the contrary, the facts clearly demonstrate otherwise, since Luciam contracted marriage in England, having resided in the city of B. for seventeen months. However, it is not appropriate to call someone who has resided for a long time in a specific place a vagus. This argument was completely rejected by the Holy Congregation on July 13, 1723, according to a summary prepared by Benedict XIV himself, while serving as Secretary, in the Lauretana case, folio. More recently, in the case of Comen, or Mediolanen, on December 3, 1863. Furthermore, even if Luciam were to be considered a vaga, if the marriage were celebrated according to the form of heretics, the vaga would still be subject to common ecclesiastical discipline, from which a marriage entered into fraudulently is not valid, unless it precedes the establishment of a domicile. Reinfest., book 4, title 3, number 88 and following. One thing remains to be explored: whether the Count could be considered a peregrinus. A peregrinus is one who is traveling and is on a journey.

[*Latin ed. p. 561*]

Here, they reside, which certainly does not befit Ferdinand. And even if he were a foreigner, he should have contracted the marriage not in the place where he happened to be, but in the place where he maintains his domicile. *Perrone de matr. christ., lib. 2, sect. i, cap. 6, art. 4.*

THE DEFENDER OF MARRIAGE, BY OFFICE, OPPOSED IT. To assert the validity of the marriage, he argued from the facts to the consent, deducing from confessions and circumstances that Ferdinand had long intended to marry Lucy, and that he had hinted this to his mother, writing vehemently about his intention to abandon "the woman who has been with him for two years." He had then decided to celebrate the marriage in England, but was prevented by his mother from returning to London with the woman. However, she had come to this decision only for the sake of not being forced; and in order that the matter might be expedited as quickly as possible, in the only way that seemed possible to her. And although she was unaware of the nature of the sacrament, this did not invalidate the marriage, because, according to the common opinion of the Doctors of the Church, an error in law concerning a canonical impediment does not affect the sacrament, because it does not diminish the consent. *Couvarruv. tit. de spons. p. 2, c. j, n. 2, and Sánchez de matr. I, 2, disp. 32, n. 2.*

With this erroneous, but harmless, opinion, Ferdinand celebrated the marriage with mature deliberation; certainly prepared to patiently endure the consequences, as he wrote to his uncle on the very day of the wedding,

Translated by churchlatin.ai, a product of Boyne Archives

"I have taken a wife (Lucy), according to the laws of England." He added, "I know all the consequences of this act, the privation and sacrifice that will follow, except for..."

Because he knew very well the woman he had taken as his wife, he had vehemently desired to leave his homeland, so that the marriage would not be known to the public. This was confirmed by the judicial examination of the Count. When asked by the judge, "What formula did you present before the civil magistrate?" he replied, "I did not express my consent." *Acta, tom. Xl, fase. CXXXI. 36.*

[*Latin ed. p. 562*]

562 "Vos estis mariti?" respondit, "certissime, in omnibus." Iudex insistebat, "Num serio et sinceriter consentistis, non solum verbis, sed etiam re et animo?" Et ille respondit, "Certissime." Iterum interrogatus, "Quid significabat hoc consentientem, necne, ad vinculum coniugii, usque ad mortem?" Ille affirmavit, "Per se, significabat consentientem ad vinculum coniugii toto tempore vitae." Ex his et aliis responsionibus similibus, apertum est qualis fuit animus eius cum matrimonium contraxit. Ex religione iuramenti, qui ad vinculum coniugii adjunxit, intelligendum est quid Ferdinandus vere voluerat agere: quia, iuxta Sánchez de matr. lib. i disp. 2 num. 20, in iuramento est virtus talis, ut faciat valere actus alios invalidos, eo modo quo possunt valere. Praeterea, Comitem in iudicio nullitatis apud tribunal civile B. esse protestatum, "Coram Deo et hominibus, ego subscriptus declaro, numquam me admisisse, ut tribunal habeat potestatem petendi solvendum iuramentum quod edidi, vel datam promissionem." Similibus verbis ad Ordinarium missit declarationem, cum fortasse persensit eum ad sententiam nullitatis proferendam inclinare. Argumentum ex doctrina a Sánchez tradita de matr. lib. 12 disp. 10 n. 6, quod nimirum contrahentes, cum rationem contractus a ratione Sacramenti separare cupiunt, nihil faciunt; quia tunc accidit, quando contrahentes veram intentionem habent separandi, quantum in ipsis est, rationem Sacramenti a matrimonio. Ferdinandum veram hanc intentionem non habuisse, ostendi primo ex allatis contrariae voluntatis iuramento firmatae argumentis; secundo, quia constare patet quod tam longe ab eo erat intentio huiusmodi, ut potius vehementer benedictionem sacerdotis exoptaret. Siquidem in littera ad avunculum scribebat, "Fortasse in longinqua aliqua regione, nobis datum erit a Catholico Presbytero coniugii nostri benedictionem consequi." Ceterum, quaestionem a Sánchez propositam intimius perpendere, Schmalzgrueber de spons. et matr. lib. 4 part. i n. 304.

[*Latin ed. p. 563*]

Marriage 563: Those who judge that the opinion of those who deny that baptized faithful can validly contract marriage is truer, which opinion holds that such a marriage is true and valid by reason of contract, and

Translated by churchlatin.ai, a product of Boyne Archives

does not have the character of a sacrament; however, in a case entirely similar to this, it demonstrates a double intention in the contracting parties: first, a legitimate and general intention, to contract marriage in the manner in which baptized faithful can; the second, an erroneous and conditional intention, namely, to contract solely by reason of contract, without a sacrament, if it can be separated from the marriage. However, when the first intention prevails, as the more powerful and governing one, the second accomplishes nothing: because the first intention does not destroy the principal intention. Indeed, Ferdinand, a Christian and Catholic man, decided to celebrate a marriage in England, not for the reason that he would be breaking a vow at will, but so that he would not incur obligations and would expedite the matter. Briefly: When he could not celebrate a religious marriage in his homeland due to the mother's opposition, he considered it sufficient to enter into a valid marriage before the civil magistrate in London; and this was the primary intention that the aforementioned author calls general and legitimate. He held an erroneous opinion, namely, that he could be legally joined in marriage in England by reason of contract, not by reason of the sacrament; therefore, since he could validly marry sacramentally, he decided to marry civilly, in that manner which he considered uniquely possible. Therefore, since his erroneous opinion regarding the value of the Sacrament was entirely subordinate to the will to contract marriage in any way, and since no impediment existed from the part of the Church, the prevailing intention to celebrate the marriage, the first and general intention, could not have caused the erroneous intention, if any existed, to have any effect. Regarding the second point, the alleged defect of consent, arising from a condition of dissolubility that Ferdinand is said to have had, is answered first by denying the premise; because Ferdinand did not express this intention either before or during the marriage, nor did he confirm it in his will. It clearly appears from the records that he did not...

[*Latin ed. p. 564*]

564 The marriages of Lucy were never disclosed to her mother; indeed, during the marriage itself, she certainly knew that divorce was permitted by English law, but contrary to her most certain intention of obliging herself for the entire duration of her life. However, the lack of a definite intention, which could have moderated or destroyed the bond intended to last a lifetime, was not sufficient to eliminate that original intention, merely knowing the possibility of dissolving the marriage. In the marriage contract, no condition whatsoever, conceived in any way, can invalidate it, even if it is contrary to the very essence of marriage; but only a condition that is attached to the act of the will, ^if, indeed, the marriage were not contracted otherwise than under that very preconceived condition. As Pontius states in *De Matrimonio*, book 1, chapter 20, number u, the declarations

Translated by churchlatin.ai, a product of Boyne Archives

of the Count, expressed at the time when he no longer led a common life with Lucy, did not change the situation; for he certainly would never have entered into the marriage if he had not been able to dissolve it. For he always stated the single reason why he celebrated the marriage in London, namely, so that he would not be forced to submit; (otherwise, he would have contracted the marriage even under the eyes of his mother), that he had taken Lucy as his wife as long as she lived, that he had requested the priestly blessing, and that he had willingly faced the inconveniences and hardships of life that he had foreseen. He warned that, in invoking the law, it must be kept in mind that Ferdinand, after a quasi-domicile established in England, subsequently departed from it temporarily, but with the intention of returning, not intending to migrate permanently, but only to travel far from his homeland, and to establish a home where he could provide the necessary sustenance for himself and his spouse. He also invoked the decree of Urban VIII, and the constitution issued a few years ago, which his opponent also invoked. In fact, he maintained that no doubt could arise regarding the quasi-domicile established by the Count in London, due to the time, the office, and the intention.

[*Latin ed. p. 565*]

Marriage 565. Through a diplomatic appointment, Ferdinand had moved to London, and remained there from May 24th to June 29th, that is, for more than a month; which is sufficient time for the purpose in question. Besides the passage of time, the Count had intended to remain in London in order to acquire expertise in the profession of a money changer, and until another opportunity arose, to obtain a position that would allow him to support himself independently of his mother. This was, above all, his desire. Indeed, when questioned by the appointed judge, "if, during that period in which you were absent from your duties (assigned to the service of the legation), you could have found another state of life or a position or office by which you could provide for your necessities, would you not have gladly embraced it?" the Count replied, "Certainly; I would have accepted a position by which I could provide for my necessities, because that was all I desired, to be free from subjection." This is also evident from other documents, as well as from Lucy's testimony. When B. was recalled by his mother through an electrical message, and Ferdinand learned that he no longer needed to return to London; nevertheless, despite this, he persisted in his intention to return, as is clear from his own testimony and from that of Lucy, without any shadow of doubt. Therefore, the Count's intention and desire were to maintain his residence in London until the celebration of the marriage. However, he had not indeed deliberated to establish a permanent residence there, but rather, while B. was considering returning, he had hoped to travel to other regions, where he could provide for his own and his wife's support. He wrote this to his uncle on the very day of

Translated by churchlatin.ai, a product of Boyne Archives

the marriage. From these two points, two very serious arguments arise against the exception of lack of domicile. For if he had already failed to find a profitable position anywhere in the world, and, as he wrote to his uncle, he considered it morally impossible to return to his homeland, and in fact, he never left the London house, it follows: or he himself, despite the precariousness...

[*Latin ed. p. 566*]

Marriage 566: An interruption of one month does not always invalidate the domicile, according to the sense of Law y, Code, book 10, concerning inhabitants; or, it may be considered that one has decided to begin a life of wandering /; his § Celsus, concerning municipal matters. In the first case, no one can claim that the validity of the marriage is affected; in the second, the marriage was no less valid, having been contracted in London while maintaining the intention of wandering, as Pontius states in *De Matrimonio*, book 3, chapter g, number 2. Another argument remains, but it does not pertain to the woman. For she is not a citizen of any certain state, and therefore it is less grave that she should be considered to be living as a *vaga*. However, since she followed Ferdinando as it were in the shadows, nothing prevents her from either wandering everywhere, or from having a domicile in London, from which she only intended to be absent for the shortest possible time, as is evident from her testimony. Therefore, whether Lucy should be considered a *vaga* or as one maintaining a domicile in England, in either case, Ferdinando, who married her, contracted a valid marriage. Reiff, book 4, title 3, § 3, number 121. With these premises, the Most Eminent Fathers of the Sacred Congregation were presented with the doubt to be resolved: Does nullity exist in the marriage in this case? And in the full assembly on May 4, 1878, the Eminent Fathers gave the following response: Affirmative. The cause proceeds. ARGUMENTS OF THE DEFENDER OF THE MARRIAGE: A distinction must be made between a domicile *ex officio* and one that is *quasi* a domicile, as Schmalzgrueber states in *Iure Eccl.*, part 1, *Nova Collectio*, title 2, § 2, number 8, saying: "There are two [kinds of domicile]; one is established by law, and the other is *quasi* a domicile." First, we will present a summary of the new argument of the defender of the marriage, because it truly preceded the final response of Ferdinando, the petitioner. Otherwise, objections would have been presented against the natural order of things.

[*Latin ed. p. 567*]

Marriage is said to require a quasi-domicile, and it seeks a long-term residence in a place, but not necessarily a stable and permanent one; the other, simply called a domicile, is contracted with a view to a stable and permanent residence. The quasi-domicile constituted a necessity for validly contracting marriage. Then, the author describes the essential characteris-

Translated by churchlatin.ai, a product of Boyne Archives

tics of a quasi-domicile, adding from the same source, loc. cit., n. 16: "A quasi-domicile is acquired in a place where one resides, not permanently, but for a year, or at least for a significant portion of the year." He conceded that Ferdinand had a domicile in B, and furthermore, that he had a quasi-domicile in several places due to the variety of times and offices: in London, while engaged in the business of a money-changer. With these circumstances, nothing prevented him from celebrating the marriage in London. Innocent, in chapter 6 of his work on penance and remission; Sánchez, on marriage, book 3, dispute 32, n. 12; Hurtadus on sacred and civil matters, dispute 5, on marriage, difference 3, n. 1; and the Roman Rota in the case of Faventina concerning the nullity of marriage, June 3, 1771, § before Riminaldo. Ferdinand established a quasi-domicile in London, and then rented a house for a month, so that he could there, according to the custom of the city, pay pensions week by week. He moved there the furniture that would suffice for a sufficiently long period, leaving almost nothing in B. Having added to the residence the intention of remaining there for a significant portion of the year, because for one or two years the Count would be engaged in the work of the mint. Therefore, no one could claim that Ferdinand had acquired a quasi-domicile in London. Nor can it be said that he abandoned his domicile, because on June 29, B left, having been called away by an urgent message; for a domicile is not lost by one who departs from the place where he has established his residence for a temporary and precarious reason; and he would not have left if nothing had called him away, so that when he set out to travel, if he returned, he ceased to travel (I. 7 cod. de inc., tit. 10). Indeed, the acquired quasi-domicile...

[*Latin ed. p. 568*]

568. To maintain the marriage of one who has departed from the same place, provided that he intends to return, Gratian, *Disputatio*, book 4, chapter 4, paragraph 16; Fagnanus, in the chapter concerning parish priests, number 31; The Sacred Roman Rota, in the case *Nullius seu Senogallien. bonorum*, May 12th, § 122, before Muto. Indeed, it cannot be doubted that Ferdinand had the intention of returning to the domicile established in London, in which he persevered even while residing in the city of B., although summoned there. Truly, when he returned, and knew that his mother was opposed to his returning to England, nevertheless, he remained steadfast in his intention to return. Therefore, it is of no consequence that the Count did not choose London of his own accord, but rather was compelled to reside there by the will of his mother, for the purpose of punishment. For from this, it cannot be deduced, as the Count's advocate would have it, that he can be compared to those who are detained in prison for correction or custody. Therefore, the authority of Coscius is invoked improperly, who states that no marriage is contracted before a parish priest in a prison, by those who are detained there accidentally for correction or custody. But

Translated by churchlatin.ai, a product of Boyne Archives

Ferdinand, being of mature age, of his own free will, not accused of any crime, not subject to any condemnation, except for the injustice of being compared to criminals, was endowed with full freedom to choose his domicile. And even if he resided in London for the purpose of his mother's punishment, he never had anything in common with the domicile of a person confined in a prison for custody; for he desired nothing more than to be subject to no one. That he disliked the London residence does not alter the matter: for he always wished to remain elsewhere, if he could, and this condition is proper to all domiciles. Finally, it will profit the Count nothing to invoke the Benedictine Constitution, nor the vow of Emi Tarquini. For the most learned Pope confirmed the common law, according to which the constitution is framed, and a residence of one month is considered a mere presumption, since nothing is known about the intention. The same applies...

[*Latin ed. p. 569*]

569. The validity of marriage is confirmed by Theologus Ballerini in his commentaries on Gury's treatise on marriage, number 83g, note 6, in fine. For the Pontiff did not intend to state there that a period of one month is sufficient, either for him who does not have the intention of acquiring a domicile or quasi-domicile, or for him who has this intention, that he cannot validly contract marriage before that month has passed; or finally, that the month is sufficient for acquiring a domicile or quasi-domicile: but rather, he intended to provide a mere indication, by which it may be sufficiently presumed that the contracting party had the intention of acquiring at least a quasi-domicile, and therefore, unless something else suggests otherwise, it should be considered in judging the validity of the marriage.

FERDINANDI PATRONI'S RESPONSE. First, anticipating the last objection of the defender of the marriage, he states: that, according to Benedict's constitution, the party is considered to lack a quasi-domicile if there is any, more or less significant, absence from the same place, as in the case, when the intention of returning is present. Ballerini admits the intention without the month; Tarquinius postponed the month without the intention. But neither says anything about the absence that occurred during that delay. Therefore, leaving aside the question of intention, it remains that the interpolated delay does not suffice to establish a quasi-domicile. But the defender of the marriage demonstrates the intention of the Count from two facts: 1) that he held an office in the monetary department; 2) that he rented a small house to live in in England. However, from the notes of the lessor himself, it appears that the house was rented for a week; and if the young people had intended to live there for a long time, they would not have chosen the custom of a week. As for the office, it also appears from the documents that it was neither seriously offered nor seriously accepted. While the Count was in London, he had inquired of his friends whether

Translated by churchlatin.ai, a product of Boyne Archives

they could find him a position anywhere. And it cannot be objected that this is the case of one who, after having established a domicile in a place, intends to move to another, but in the meantime, during that time, he...

[*Latin ed. p. 570*]

570. The Marriage Inhabitant is considered. For Ferdinand, from the very beginning, sought England with the intention of finding another opportunity, and a profitable position. Nor did he ever intend to remain in London for even one or two years; for the facts demonstrate that the Count was always obliged to follow the wishes of his mother, and never to act according to his own will. In that course of affairs which he had long pursued, he obtained permission for a temporary absence in order to present two specimens, one in international law, the other in jurisprudence. Finally, the most eloquent fact is that he left England almost immediately after entering into a civil union, never intending to return. Moreover, as is taught in the Constitution, and by Natalis Alexander in *Theologia Dogmatica et Moralis*, Book 2, on the Sacrament of Matrimony, Chapter 2, Article 2, Rule 6, in order to acquire a quasi-domicile, it is necessary that the parties not only have a prior residence, but also a subsequent one for a certain period of time. But this subsequent residence is considered by all authors who have treated this subject to be a very important element. The axiom that a domicile is not lost by one who departs from it for a temporary and precarious reason with the intention of returning, cannot be applied to a quasi-domicile. The text in Book 7 of the Civil Code, and the decision of the Rota cited above, speak of a domicile, and not at all of a quasi-domicile of residence. The place where the Count established his property, and the sum of his affairs and fortunes, was not England, but B. Nor can it be proven that the Count intended to return from England to B. as a pilgrim, but rather he appeared to be a pilgrim, departing from the domicile of B. to go to London. It cannot be admitted that those departing from England intended to return. It is possible to have a double intention in a change of location: one to acquire or resume a quasi-domicile, the other to enter into marriage. The greatest distinction between the two is that the intention of a quasi-domicile, if pursued in good faith, leads to the validity of the marriage, while the other, if pursued in bad faith, leads to nullity: Benedi-

[*Latin ed. p. 571*]

Concerning Marriage, Canon 571 of the 14th Institute. Therefore, any change of residence undertaken for the purpose of contracting marriage without a genuine intention of establishing a domicile, or undertaken with fraudulent intent, is void; all the more so, if it is made to a place where the Council of Trent does not hold authority. Benedict XIV, *De Synodo*, Book 13, Chapter 4, number 9. In truth, it was the case that the young men, upon returning to England for the first time, never intended to remain there for a

Translated by churchlatin.ai, a product of Boyne Archives

long period; but when B. returned, they immediately conceived a new plan to return, not to remain, but to celebrate fraudulent marriages, so that they might depart after having done so. Therefore, there was nothing other than the intention of returning in order to commit fraud, and thus, their initial departure from England lacked any true establishment of residence, and also lacked that intention of residing which the law requires. Therefore, the entire case must be considered within these limits. The young men spent approximately one month in England without the intention of remaining there for a long time. Even if they had had the intention of remaining, and had been able to establish a quasi-domicile, a subsequent change of both residence and intention occurred, lasting another month, because for thirty days B. resided there; and because, upon leaving, they conceived the plan of returning in order to celebrate fraudulent marriages. After this new development, the question was proposed to be resolved according to custom. Whether one should adhere to or depart from the decisions made in the previous case. And the Most Eminent Fathers in the Congregation gave their response on July 20, 1878: To be postponed to the first meeting after the next. Finally, the case was presented again on September 14, and the resolution was issued: Adhering to the previous decisions.

[*Latin ed. p. 572*]

572. From all these matters, the following conclusions are drawn regarding marriage:

I. In a place where the Council of Trent has not yet been promulgated, the doctrine transmitted by the Most Holy Pope Pius IX in his allocution of September 27, 1852, namely that marriage cannot be valid unless it is simultaneously a sacrament, does not apply.

II. However, since this law contains a presumption that is derived from fact, and if the fact refutes the presumption, the law cannot apply, because the act of the agent cannot go beyond his intention.

III. Marriage is not considered to exist due to a lack of consent, if the contracting parties intended to separate the contract from the sacrament, that is, if they contracted without intending to receive the sacrament.

IV. This applies if the contracting parties did not intend to do what the Church requires, and if they entered into the contract only in a civil manner, without intending a religious bond.

V. Again, marriage is invalid if a condition has been added to the marriage contract that it should be dissolved at some point. However, care must be taken that only a condition contrary to the essence of marriage is admitted, in which the act of the will is involved.

VI. Marriages contracted in a place where the decree has not yet been promulgated are valid, provided that the parties have their domicile or quasi-domicile in that place.

Translated by churchlatin.ai, a product of Boyne Archives

VII. It is necessary to distinguish carefully between domicile and quasi-domicile. Domicile is established in a place where a person has established his home, the sum of his possessions and fortune, and it is sufficient to have a residence with the intention of remaining there for a long time or for a greater part of the year.

VIII. According to the Constitution of Benedict XIV, issued a few years ago, at least one month of residence is required before the marriage, which precedes the marriage, in order to establish a presumption of quasi-domicile, so that nothing is known about the intention of the parties.

[*Latin ed. p. 573*]

Marriage, Section X. It must be sought to ascertain the more probable domicile. A very important matter concerning the celebration of marriages has arisen. In certain places, opinions are given that, contrary to what is required, a continuous and uninterrupted residence is not necessary. Canon X. 573 states that those who are here have a domicile, and that their departure, even if by a sudden journey, does not invalidate it; that pilgrims, those who travel for teaching, or those who are traveling, are considered to have a domicile where they reside.

APPENDIX

Regarding the place of domicile for marriage and the validity thereof. On January 11th and May 2nd, 1868, a difficult and complex question was debated at length and intensely within the Congregation of the Holy Council, under this formula for deliberation: whether the marriage is valid or, rather, null in this case. All the weight of the deliberation in this case arose from the supposed clandestine nature of the marriage. Distinguished theologians and canonists from the city of Rome were summoned to express their opinion on the proposed question. The most learned theologian, after examining the case according to the principles of theology and the sanction of the Council of Trent, concluded that neither the man nor the woman had truly acquired a domicile at the time of the marriage in the parish in which the marriage was celebrated. Therefore, the theologian presented his opinion in favor of the nullity of the marriage; and although the woman might be heterodox, she was nevertheless bound by the law of Trent to celebrate the marriage before her own parish priest (who is such by virtue of domicile). Since the law of Trent is personal and local, it affects all the baptized, those who possess a domicile in the place where it is in force.

On the same question, the most learned Camillus Tarquini, of the Society of Jesus, and later Cardinal of the Roman Church, spoke as a canonist, and also maintained the opinion of the nullity of the marriage due to the lack of domicile or quasi-domicile. Since the doctrine that he expressed in his opinion, concerning domicile and quasi-domicile, is highly esteemed in the

Translated by churchlatin.ai, a product of Boyne Archives

ecclesiastical forum, it is therefore good to bring it to light.

[*Latin ed. p. 574*]

574. We have deemed it necessary to include this appendix, lest we overlook the distinction within canonical jurisprudence. We accomplish this through this appendix, taking the opportunity presented by the matrimonial case on page 542, in which there was a heated dispute regarding quasi-domicile. However, in order that this may be more clearly and appropriately understood, it will not be amiss to preface it with some details regarding the matter at hand. Therefore, let it be so. Paul, from a noble Roman family, having reached the age of twenty-six, desired to marry Francisca, a young woman living in London, but who was infected with the Anglican heresy. And indeed, in the City of Rome, where the parents were accustomed to meet together during the winter months, along with their daughter, all that seemed necessary for the celebration of the marriage had been prepared. And Paul, departing from the City of Rome in the month of July of the year 1862, traveled with the father of his future bride to London, in order that he might contract the marriage there, where the bride, along with the rest of her family, had already returned. However, Paul recognized the difficulty of lawfully and legitimately contracting marriage with the heterodox Francisca; and therefore, while still residing in Rome, he sought to obtain a dispensation from the impediment of mixed religion. Having been refused, and for the sake of apparent honor, he went to London; there, before the Cardinal Archbishop of Westminster, he renewed his request for a dispensation from the Holy See; which, being again denied, he devised another plan. Indeed, Paul traveled to Paris, along with his bride and her parents; and there, on August 22, 1862, they rented a house, within the parish known as Saint Magdalene, and lived together there. Paul approached the parish priest, and through him, presented himself to the Episcopal Curia; to whom he presented documents of baptism, confirmation, and freedom of status, and obtained a dispensation to marry Francisca, who was addicted to the Protestant sect, provided that certain precautions were taken; and thus, having first contracted a civil marriage, on September 20, 1862, in the parish church of Saint Mary Magdalene, he entered into marriage with the aforementioned Francisca, using the words "I take you to be my wife." On the same day of the marriage, the spouses bid farewell to their parents, and then, taking a carriage through France and Italy, they finally arrived at the port of Civitavecchia, from where...

1. Whatever was accomplished was collected through extraordinary means. But the substantial matters seem to have been completed by the grace of God, although some details are lacking that would pertain to the integrity of the events. This does not hinder our purpose, which is simply to illustrate the doctrine of the renowned Canonist of civil law. * It should be noted that Paul, although he went to Paris, could not abandon

Translated by churchlatin.ai, a product of Boyne Archives

his London domicile until he received a response from the Holy See. This response appears to have arrived in London on September 16th or 17th. Therefore, only from that day forward could Paul truly intend to establish his domicile in Paris.

[*Latin ed. p. 575*]

Appendix II 575 they wished to go to Rome. By order of the Pontifical government, it was forbidden for them to settle on the land; therefore, they considered Interamna, and there they established their home; where they also had children, who were baptized in the Catholic religion. In this city, a controversy regarding the validity of the marriage had already been instituted by the Bishop, by order of the Holy Congregation of Councils, and, according to the same Ordinary, a questionnaire was sent to each of the alleged spouses for examination. The rest pertains to the judicial records, about which I must remain silent, said the Canonist, since only this must be answered: Whether the marriage, which Paul and Francisca attempted in Paris, in the parish of Saint Magdalene, 'should be considered valid or not. The very sequence of events indicates that this was not a valid marriage. And indeed, since the matter occurred in Paris, where the decree of the Council of Trent concerning clandestine marriages was duly published, it is clear that not only Paul, but also the woman, by reason of the place, were bound by the same law, which law required, for the validity of the marriage, that at least one of them, if not a proper domicile, but certainly a quasi-domicile in that city, indeed in the very parish where the marriage was contracted, should have it at the time of the marriage. Although it is true that the woman was from London, where the law of Trent was never published, nevertheless it is quite certain that she was subject to that law in Paris, because, as Schmalzgrueber, Title on Clandestine Marriages, n. 101, and all clearly state, heretics coming from their homeland, where Trent is not accepted, are in a place where it is accepted... if they contract a marriage secretly, it is invalid. And the reason is, as the same author adds immediately, because contracts must be regular according to the laws and customs of the place where they are celebrated, and not only citizens, but all those who contract there, are subject to the forum of that place. Chapter end. On Compilations... and this is specifically decided in the chapter on France, 1, title on betrothals, etc. What I have heard said by someone, that those coming from a place exempt from the law of Trent are indeed required to marry before a priest, but that the priest himself can be chosen at his own discretion, as is granted to vagrants; I cannot, in any way, confirm this. This is new and unheard of; nor have I ever seen it judged in this way, but always the contrary. As everyone knows, the Council of Trent did not simply order that marriages be contracted before a priest, but before one's own priest; and one's own priest is only that one who has established a domicile or quasi-domicile. And the example of vagrants is

Translated by churchlatin.ai, a product of Boyne Archives

of no use, because it is openly different; indeed, it even contradicts. For the laws concerning vagrants require that a foreigner be allowed to choose a priest, which openly teaches that he who is not a vagrant does not have this faculty, and rightly so.

[*Latin ed. p. 576*]

576 Appendix II dem. For he who is a wanderer, together with a fixed abode, has his own parish priest; before whom, in a place where the Tridentine decree is in force, he is not bound by law to contract marriage under penalty of invalidity; but he is bound by the disciplinary law, which has always been in force in the Church: for a wanderer, since he has no fixed abode, has no parish priest, and therefore no law that compels him to contract marriage. Therefore, Kugler, referring to the common opinion on marriage, no. 294, writes: "Travelers are invalidly married in a place where the Tridentine decree is in force, without the presence of a parish priest and witnesses, even if the Tridentine decree was not in force in their own diocese." Indeed, even in that case, if a traveler, who is not a wanderer, nor intends to establish a fixed abode or quasi-domicile, contracts marriage in a place where the Council's decree is in force, before the local parish priest and witnesses, he would act not only illicitly, but also invalidly, because he would not be contracting marriage before his own parish priest. Pignat., vol. 5, Cons. 79, no. 33, since, as has been said, a parish priest is the proper priest only for a fixed abode or quasi-domicile. Now, in order to acquire a quasi-domicile, for the purpose of marriage, two things must be present together: actual residence in the parish, and the intention of continuing that residence for a major part of the year; therefore, it is so certain and the common doctrine is so firm, that I believe it would be superfluous to spend time arguing in its favor. For I have heard from no one that Pope Benedict XIV, in the Constitution *Paucis*, reduced the time for a quasi-domicile to one month, so that, by a new law, a quasi-domicile could be perfectly acquired for marriage in one month of residence, in order to validly contract marriage. I believe this to be entirely foreign to truth, to the mind of Pope Benedict XIV, and to the common opinion. And among many things that could be said, let me say this: First, it is certain that the unanimous doctrine of all, confirmed by the constant practice of the Sacred Tribunals, even after the aforementioned Constitution of Pope Benedict XIV, is that marriages contracted before the parish priest of the place where one usually resides are valid; and there is no other reason for invalidity, unless it is proven that the contracting parties do not usually reside in that place for the greater part of the year, or even for half the year, but only for three or four months, as the words of the Sacred Rota say in Sánchez, *de matrim.*, 1.3, disp. 23, no. 12, § And this is confirmed. Furthermore, this doctrine could not have been, nor could it be, weakened if Pope Benedict XIV had reduced the time for a quasi-domicile to one month. Furthermore, it is

Translated by churchlatin.ai, a product of Boyne Archives

known that the Constitution *Paucis* promulgated by Pope Benedict XIV was issued to prevent evils arising from similar marriages (that is, marriages contracted outside the country, and especially in places where the Tridentine decree on clandestine marriages had not been published), as can be read in the Constitution itself. Therefore, for this very purpose, it would have been absurd, and unworthy of such a Pope, to reduce the time for a quasi-domicile to one month; for it would have made those marriages, to which some salutary obstacle and remedy should be applied, easier to contract; and therefore, it would have aggravated those very serious evils, which the Archbishop of Goano...

[*Latin ed. p. 577*]

Appendix IF 577 lamented that, not only had it not resolved the issue, but it had even opened up a wider avenue for error. Thirdly, it is clear from the very wording of the constitution that Benedict XIV did not intend to establish a new law in it, but rather to recall to mind that which was already in force; hence, it relies on the authority of the ancient writers and the decisions of the ancients, and finally, it prescribed that such controversies should be settled according to the standard of the decree of Urban VIII, issued on August 14, 1627. Indeed, what is that law that prevailed on this matter between Urban and Benedict, all the classical writers teach who lived during that time interval, and who rightly represent the science of canon law; Gonzalez in leg. 3, de Clandest. Despons., n. 8; Reiffenstuel, eod. tit., n. 60 and tit. de foro comp., n. 22; Schmalzgrueber, tit. de Clandest. Despons., n. 150; Pirhing, eod., n. 19 sub finem, Pichler, eod., n. 18; Engel, eod., n. 12; Viestner, eod., n. 45; Schmier, p. 3, de Sponsal, cap. 5, n. 97; Barbosa, de officio et potestate Episc, p. 2, alleg. 32, n. 68, and many others preceding and following, etc., to which it would be tedious to add Sánchez, de matrim., lib. 3, disp. 23, n. 12, who, although he wrote a few years before Urban, throughout the entire period of which I spoke, until this very age, has always held a prominent place in this matter of marriage, both in the forum and among the writers; and the unanimous teaching of all of them is that, for a valid marriage to be contracted, a domicile is not acquired in just one month, but through such a residence, accompanied by the intention of continuing it for the greater part of the year. From the explicit declaration of Benedict XIV himself, it is manifestly clear that his intention was in no way that a domicile could be truly acquired in just one month. Indeed, after he wrote those words that have dispelled the confusion in the minds of some, namely: "After these things, we believe it necessary to add something, so that it may be clear what is required to acquire a quasi-domicile." But in this matter, it cannot be answered in any other way than that, before the marriage is contracted, he who contracts it must have resided in the place where the marriage is celebrated for at least one month, along with the other things that Fagnano mentions; immediately after this, he adds: "It might be

Translated by churchlatin.ai, a product of Boyne Archives

doubted whether, in order to acquire a quasi-domicile, for the purpose of marriage, not only a previous residence is required, but also a subsequent one for a certain period of time." To this doubt, he immediately responds: "But, since we observe that the subsequent residence is considered by those authors who have treated this subject as a very important element, so that a long domicile is sought, and nothing has been prescribed about it by the Council Congregation in the definition added by Fagnano shortly before, we do not wish to decide anything new on this matter." All of these things would be absurd and nonsensical, if in this very constitution he had already decreed that the entire period of domicile should be concluded in that one month in which one of the parties...

[*Latin ed. p. 578*]

578 Appendix II: concerning those who, in the place where the marriage is contracted, had resided before the marriage was contracted. "For who would not immediately answer thus? You ask, whether it is possible that, besides that one month preceding, any subsequent residence is also necessary. Indeed, there is no room for such doubt, Reverend Father. For if you have already decreed that that one month, which precedes, constitutes the entire period of domicile, then all opportunity for doubt has been removed and eliminated. Addai of Nola: What do you decide concerning this matter? Indeed, you have decreed: for as soon as the edict is issued by you, and the period of domicile preceding that edict is completely fulfilled, it is defined by that very law that no subsequent residence is absolutely required. Finally, you say that this subsequent residence can be considered as a support of great importance. But if, during that preceding month, we have a domicile that is complete and perfect, then, I pray you, what place can there be for supports? Supports are sought in obscure matters; but when the matter itself is present and apparent, it is just as reasonable to pursue supports as it is to seek a lamp in the bright light of noon. Whoever attributes the characteristics of a foolish and inept man to a great Pontiff, believes that, in the Constitution *Paucis*, he has reduced domicile to one month." "Therefore, what did that Pontiff intend in that Constitution? And what did those who spoke more harshly intend, when they wrote that domicile can be acquired through a residence of one month? Indeed, they intended that very thing which all mean when they say that a domicile is properly acquired after ten years. For no one is ignorant, I say not ten, but even a thousand years, as the proverb of lawyers says, can suffice to acquire a true and proper domicile; provided that there is a will, not defined by any specific time, even if it is a very long one, but absolutely perpetual, to remain in the same place. Nevertheless, since a prolonged stay is the strongest indication of a sincere and true will to continue residing there permanently, and therefore it suggests a certain presumption, it has been said that a domicile is acquired after ten years. The same must be affirmed

Translated by churchlatin.ai, a product of Boyne Archives

regarding the aforementioned assertion about quasi-domicile. Indeed, it is not possible to doubt that, in order to acquire quasi-domicile, besides the actual residence, the will to continue residing there for the greater part of the year is also required. Nevertheless, since the residence, already extended to one month, is a very strong indication that such a will is truly and sincerely held, it is therefore written by some that quasi-domicile is acquired through a residence of one month. And what follows from this? Indeed, this: since presumption must yield to truth, both by natural and positive law, therefore, if it happens that, with certain and clear proofs, it becomes evident that one did not intend to remain in the place for the greater part of the year, and the other, who claims domicile, did not intend to remain there, then..."

[*Latin ed. p. 579*]

Appendix II 579. It is properly said that he had the will to remain permanently; indeed, from the contrary will, there can be no doubt in this case; neither of them sought a proper domicile; and since the validity of marriage depends on a quasi-domicile, the marriage itself was not validly contracted. Therefore, what Benedict XIV established is entirely correct. "Because the Archbishop Goanus strongly insisted on defining such cases, and because proofs of the will to remain for the greater part of the year are very often doubtful, the Supreme Pontiff decreed, or rather, recalled what had long been established by law, that in these doubtful cases, presumptions must be used; and that the presumption is to be considered sufficiently firm for judgment, if the person contracting has resided for at least one month in the place where the marriage itself is celebrated." Therefore, the month of which Benedict XIV speaks is nothing other than a certain presumptive proof in doubtful matters concerning the true and sincere will to remain for the greater part of the year, which, therefore, does not abolish the necessity, but confirms it; so that if we are not dealing with a doubtful matter, but with a clear and manifest matter, it is certainly to be held that such a will was lacking, even with a residence of one month, that no domicile was sought in any way, and therefore the marriage was not valid in any way." Having established this rule, the Canonist, in order to show that there was no marriage in the dispute, demonstrated that neither of the contracting parties had a proper domicile at the time of the marriage in the parish of Saint Mary Magdalene. This vow was made many years after the celebration of the said marriage. And therefore, having made this vow, the Canonist posited the hypothesis that the aforementioned betrothed were returning to England to revalidate the marriage in Rome, without any renunciation. Since England is exempt from the law of Trent, it uses common law or the disposition of Chapter [unspecified]. Hence, the Canonist continued, "And it is clear that only two things are to be observed here: 1° that in England, the marriage could not have been revalidated unless one of the

Translated by churchlatin.ai, a product of Boyne Archives

parties had previously sought or regained a domicile, either in London or in another city of that region; 2° that such a revalidation could not have been lawfully carried out by any means, unless a dispensation from mixed religion had been obtained." I said first that it was necessary that an English domicile or quasi-domicile had previously been sought or regained by one of the parties. It is not to be doubted that even Francis, being originally from London, lost her London domicile when she followed Paul. From that time, she abandoned her domicile in Cariati, in order to permanently adhere to Paul's domicile. Thus, commonly, the Doctors [of Canon Law] who deal expressly with this case, that is, the case of a marriage that is entirely invalid, in which a woman has left...

[*Latin ed. p. 580*]

580 Appendix II, and that the domicile of the spouse should be followed. In Quarten, it is argued (by Barbosa, *de off. et potest. Episc.*, p. 2, alleg. 32, n. 67) that a woman who contracted an invalid marriage before the parish priest of her parish, and then moved to the home of her spouse residing in another parish with the intention of remaining there permanently, cannot afterwards validly celebrate the marriage again before the same parish priest; for he is no longer considered her proper parish priest and minister, once the woman has changed and abandoned her first domicile, immediately upon beginning to reside in the parish of her spouse with the intention of remaining there permanently. Thus, Sanches, etc. I have stated that in such a case, a valid marriage could not be celebrated without a new dispensation obtained from the impediment of mixed religion. Indeed, the dispensation obtained from the Archbishop of Paris was clearly not valid. For, in order for it to be validly granted, it must be done *in persona subditą* (for the person subject to the jurisdiction). This condition, and within these limits, is granted by the Apostolic See to certain bishops, in whose dioceses heresies have been openly rampant for many years, the power to grant dispensations from this impediment; thus, for those who are in no way subject, such power is entirely lacking and nonexistent. Indeed, neither Paul nor Francisca (who was also a heretic, and therefore indirectly, but certainly directly, incapable of receiving the benefit of the dispensation) were subject to the Archbishop of Paris, when neither of them had a true or quasi-domicile in the city of Paris; for it is certain, with regard to a dispensation from this impediment, that no one is made subject to the bishop granting the dispensation, unless at least through a quasi-domicile. I say "at least" because it has always seemed to me that a true, and therefore permanent, domicile is required in this matter. When I consider that the Apostolic See has always denied such a power to those bishops who did not have a large number of heretics in their dioceses, and that the Apostolic See has consistently and truly refrained from granting such dispensations, even by itself, in those places where heretics were either none, or few, then I

Translated by churchlatin.ai, a product of Boyne Archives

am indeed led to the opinion that the intention of the same Apostolic See in granting such powers has always been that such dispensations should remain confined, like certain safeguards, only to those places where heresies are openly rampant. From this, I have always believed that such a privilege is so local that it can only be exercised with respect to those who are in a place afflicted by heresy; thus, there is a just hope that the effect of the dispensation will never emerge outside of the aforementioned limits. But if they sought only a quasi-domicile, how can they be said to be in a place afflicted by heresy? Indeed, they themselves openly admit that they do not intend to reside in that place, but rather, after a few months, they will bring that plague of heresy, with which the woman is infected, into the Catholic homeland of the man. Therefore, if such people apply for a dispensation...

[*Latin ed. p. 581*]

Appendix II 581: That these [permissions] could validly be admitted, pray tell me, where were those barriers already commanded and established by the Apostolic See? Where is that solicitude for preventing mixed marriages in Catholic regions? What sorrow, what wounds for the Bishops, who, having entirely Catholic dioceses, now see them infected by heretical individuals with the authority of foreign Bishops? And furthermore, as, for example, Hispania has thus far taken the greatest care to remain free from all heretical contagion, how could it further protect itself from the same? All of these things, which are entirely contrary to the intention of the Apostolic See in granting this permission, are also utterly pernicious to the discipline and salvation of the Church. Another reason, for which I at least have inserted the word "at least," is that, when it comes to Italians, and even more so to the Romans, to whom Paul belonged by the most noble... lineage, it is already established beyond all controversy that no Bishop can use the power of dispensation, unless those who request it have completely and permanently abandoned their Italian domicile; so that, as if a domicile acquired in the Bishop's diocese were sufficient for the validity of the dispensation for them in no way. FROM THE SACRED CONGREGATION OF RITES: A craftsman from Taurinensis, having joined with others, submitted an apparatus, which he claimed to be the author of, to the examination of the Sacred Congregation of Rites. It consisted of two small columns, equipped with a handle, by which the Blessed Sacrament, when it must be publicly exposed for veneration, could be raised or lowered. Attached to the petition were letters of recommendation from several prelates; who, considering the use of this apparatus to be appropriate, recommended it to their parishes within their dioceses, while nevertheless submitting the matter to the judgment of the Church. The Sacred Congregation of Rites, however, moved by serious concerns, judged that the use of such a machine should be rejected; and therefore responded to the petition with: "Negative." Then, those who had submitted the petition sought to have the orig-

Translated by churchlatin.ai, a product of Boyne Archives

inal documents returned to them, upon which the Sacred Congregation of Rites rendered its judgment: but although it agreed to do so, because it was contrary to its practice; the aforementioned society persisted, more insistently exposing...

[*Latin ed. p. 582*]

Appendix 582 II: Having descended, so that the required documents might be deposited with the public Notary, concerning the completed sale of a certain medical apparatus to a buyer thereof; threatening, in the event of further opposition, recourse to the civil tribunals. Thus, for the first time in the City of Rome, an ecclesiastical Congregation, which represents the Supreme Pontiff, was preempted by secular tribunals, by those who profess to be the most devoted sons of the Holy Church. Therefore, since the Holy Congregation does not usually deal with such matters, it deferred its own right in this case. However, in order that the faith of Priests and the Faithful might not be deceived by the publication of these documents, authority was granted to us to declare that the Holy Congregation disapproves and disapproves of the use of said mechanical apparatus. Furthermore, the same Holy Congregation warns any buyer or propagator of said apparatus, notwithstanding the letters of commendation, which should be held as having no value; both because of the weighty judgment of the Apostolic See, and because it would be contrary to the minds of the Bishops, who in no way wish to oppose the judgment of the Apostolic See by recommending something. With this declaration made, We issue the Decree of the Sacred Congregation, which reads as follows: 1. TAURINEN. In the Ordinary Congregation of Sacred Rites, held on the aforementioned day, at the Vatican, when a petition was presented by the aforementioned inventor, Joseph Rua: whether the use of a certain machine, constructed by him, by means of which the Tabernacle might be raised and placed aside while the Blessed Host is exposed for the adoration of the people, might be permitted? After careful consideration, the Fathers, both present and resident, unanimously responded: No. July 7, 1877. 1. How cautiously those Bishops act who, in matters recently devised, anticipate the judgment of the Apostolic See, before either rejecting it as bad, or commending it as good! They are usually consulted by the local Ordinaries regarding their opinion by the Holy Congregations, whenever something of grave importance is to be resolved. However, the Bishops do not usually precede the judgment of the Holy See, although they are always ready to receive it with a joyful spirit.

[*Latin ed. p. 583*]

MOST HOLY FATHER, OUR LORD LEO XIII, by Divine Providence, Pope, addressed the Cardinals on May 12, 1879, in the Vatican buildings. Venerable Brothers, the God, RICH IN MERCY, who so tempers human

Translated by churchlatin.ai, a product of Boyne Archives

affairs that He mingles joy with sorrow, pleasantness with bitterness, has deigned to alleviate, with some consolations, the sadness caused by the consideration of common troubles, especially at this time following the address which We recently made to you. Indeed, the memory of those things which We then said has not yet faded from your minds, when We confirmed the election, or rather, the appointment, of the Venerable Brother Patriarch of the Chaldeans of Babylon, hoping that those who govern the Ottoman Empire would readily be inclined to grant fully and abundantly to the Catholic subjects under their jurisdiction, what justice and equity demand. And now, We rejoice that, following our hopes and prayers, this has happily come to pass through the benevolence of God, and the justice of the Supreme Prince who governs that Empire. And first, He himself, whom We mentioned, the Patriarch of the Chaldeans of Babylon, having been duly elected and confirmed by Us, was, as is customary, notified by a civil diploma, whereby he, as the publicly recognized head of the Chaldean people, has freely obtained the exercise of all rights and prerogatives, with which his predecessors were endowed and which they enjoyed according to their dignity. And furthermore, We are pleased that ALIA, who had followed an illegitimate path to the Episcopal See, had reached the Zachean See, and shortly thereafter aspired to the Patriarchal dignity.

[*Latin ed. p. 584*]

584 An address, and other matters, concerning certain monks and ecclesiastical men, who had been associates in his defection, and who, with humble declarations, submitted themselves to this Apostolic See, amending their former error with great merit. From this, hope shines forth to us that the grievous schism, which had recently afflicted the Chaldean Catholics, inhabitants of Mesopotamia, will be utterly extinguished and removed. Moreover, as we are deservedly filled with singular joy for this reason, another cause of rejoicing has arisen for us: the resolution of a most grievous matter, which had arisen among the Jacobite heretics and the Catholic Mausilienses of the Syriac rite. You know, Venerable Brothers, that those heretics, turning their attention to their own affairs, had suddenly invaded, with armed force, churches which had long been peacefully held by Catholics, due to a certain disagreement that arose between the Catholic Patriarch of the Syrians and the civil government; and, after just and persistent complaints from these, they stubbornly resisted, relying on the power and favor of certain influential individuals. However, recently, when access to the imperial court was easily granted to the voices of justice, and the judgment of this matter was permitted to the arbitration of noble men, who serve as legation for the French and British governments before the supreme Prince of the Ottoman Empire, a most equitable judgment was rendered, which satisfied the rights of the Catholics, as was fitting. We are therefore all the more pleased with this victory, because several families of

Translated by churchlatin.ai, a product of Boyne Archives

the Jacobites, who reside in Marden, have returned to the ancient faith of their ancestors, and many others give clear signs that they will follow their example. But, although what we have said has been pleasing to us, we have nevertheless derived the greatest comfort from the most desired change that has taken place among the Armenian people. We do not wish, Venerable Brothers, to detract anything from the joy of this event, remembering those things which many of the Catholics of Armenia, together with their excellent pastors, have bravely endured for nine years, adhering to this Chair of Truth, despite the deceit and envy of those who, unmindful of their duty, have abandoned Catholic unity. For these have attacked innocent brothers with calumnies, and have spread this false opinion...

[*Latin ed. p. 585*]

Allocution 585. They attempted to instill a certain sentiment in the minds of those who governed the state; namely, to diminish the authority and teaching of this Apostolic See, to weaken the due fidelity to political power, to turn the subjects of the Ottoman Empire away from obedience to their own princes and to transfer them to the obedience of foreign princes; and thus to oppose themselves to the rights and prosperity of the nations themselves.

This is nothing more than a falsehood, utterly foreign to truth; for the Church of Christ, solely concerned with the eternal salvation of souls, strives everywhere to promote and defend this, with the supernatural aids with which it is divinely endowed. However, for this reason, it does not disturb the order or arrangement of civil society, nor does it weaken the authority of earthly princes; on the contrary, taught by Apostolic words, it commands every soul to be subject to higher powers, not only for the sake of punishment, but also for the sake of conscience; and it has been shown that peoples are all the more faithful to their princes, the more they are accustomed, under the guidance and instruction of the Church, to preserve incorrupt faith in God.

Moreover, reason teaches and history testifies that the common bonds by which the people of one nation are united to each other are strengthened and made solid by the Catholic religion; from which it follows that the tranquility of public affairs and other important benefits that usually derive from it, thrive and prosper all the more. But it is not pleasing to dwell on those false statements, which, during a time of grievous discord, engendered deceit and hatred, when even those who had used this method of speaking and acting came to regret it, striving to defend their defection with comments and calumnies. For there were not lacking those who, having returned to a better path, and detesting what they had done, openly confessed that true, justice, and solid happiness are to be found in the bosom of the Mother Church. Therefore, clothed in the garment of charity, it is more fitting for us to deal with those who have spoken or acted wrongly,

Translated by churchlatin.ai, a product of Boyne Archives

as with a heavenly family, that those who were dead may live again, and those who were lost may be found.

Among those who, by their return, have increased our joy, we wish to commend him above all, whom we consider the leader and head of the secession.

[*Latin ed. p. 586*]

586. The brethren who had fallen away were restored; for, setting forth a noble and arduous example with great fortitude of spirit, he did not blush to openly confess his fault, spontaneously relinquished honors and offices not rightfully his, and sought to expiate his error with salutary penance; then, he so ordered his conduct and manners that he gave open signs of sincere conversion; and finally, approaching Us, he exhibited brilliant proofs of submission and obedience. Wherefore, We judged it fitting to act with clemency towards him, and, contrary to the usual practice of ecclesiastical discipline, We deemed it proper to grant him an indulgence so that, adorned with the insignia of the episcopate, he might proceed. May God grant that all others who have followed him in this unfortunate defection may quickly imitate him in his return to the camp of Israel. In the meantime, while we hope for this, We are pleased to announce that the Catholic Armenian community, after a long and arduous struggle, and its legitimate Patriarch, having obtained peace with dignity, have been restored by the Ottoman Imperial Government to the possession of their rights. Concerning this matter, We offer deserved praise to that Government, which, having once recognized the calumnies of its adversaries, readily granted to the Catholics those things which were rightfully theirs and which the duty of a just Emperor demanded. By this action, it has manifestly shown that it is determined to faithfully fulfill all that was agreed upon in the public treaties concluded last year with the most powerful European nations, concerning the protection of the free exercise of the Catholic religion within the Ottoman dominion. Therefore, Venerable Brothers, for these things which have happily transpired, the greatest of thanks must be offered to the Lord of all blessings, and we earnestly beseech Him that He may command that these things remain firm and established, and that He may constantly increase them. These are the things which We have briefly said to you today concerning the affairs of the Eastern Churches. Now, it is pleasing to Us, Venerable Brothers, to publicly demonstrate Our affection and concern for your most distinguished Order, which has been most dear to Us from the beginning of Our pontificate, and which has always held a preeminent place in Our...

[*Latin ed. p. 587*]

587 We have declared that this address will be held in high esteem among us. For today, we have decided to admit to your College most

Translated by churchlatin.ai, a product of Boyne Archives

distinguished and worthy men, some of whom have demonstrated great excellence in zeal, counsel, and skill in performing pastoral duties, in caring for souls, and in defending the doctrine and rights of the Church, both publicly and in writing, and through the ministry of the word; others have earned great commendation for their knowledge and illustrious reputation, whether through the work of teaching or through noble publications that are monuments of their genius; and all of them, with unwavering faith in this Apostolic See, through their diligent labors for the Church, and through their outstanding merits of priestly virtue and constancy, which have been observed and known by many, have fully proven themselves worthy to be honored with the sublime title and insignia of your College. – These are: FREDERICK LANTGRAVIUS DE FURSTENBERG, Archbishop of Olmütz; JULIAN FLORIAN DESPREZ, Archbishop of Toulouse and Narbonne; LUDWIG HAYNALD, Archbishop of Kollotschau and Baksien; LUDWIG FRANCIS PIE, Bishop of Poitiers; AMERICUS FERREIRA DOS SANTOS SILVA, Bishop of Portugal; CAJETAN ALIMONDA, Bishop of Albenga; JOHN NEWMAN, Priest of Philippi, from the London Congregation; JOSEPH HERGENRÖTHER, Prelate of Our Pontifical House, Doctor at the Academy of Würzburg; THOMAS ZIGLIARA, Member of the Dominican Order, Rector of the College of St. Thomas Aquinas in the City. To this number, we also add our German brother, JOSEPH PECCI, Prefect of the Office of our Vatican Library, of whom we shall say only this, Venerable Brothers: having completed a long career of teaching in literature and the more rigorous disciplines, and being bound to us with the closest affection, he is held in equal esteem by us; and his election...

[*Latin ed. p. 588*]

588 Address: To you, with your most honorable judgment, we acknowledge that you have participated harmoniously and with the greatest kindness in these matters; therefore, as it is fitting, we express our gratitude to you. What do you think? Therefore, with the authority of Almighty God, and of the Holy Apostles Peter and Paul, and with Our own, we create the following Cardinals of the Holy Roman Church: Frederick LANTGRAVE of FURSTENBERG; Julian FLORIAN DESPREZ; Lewis HAYNALD; Lewis Francis; Americus FERREIRA DOS SANTOS SILVA; Caietanus ALHTIONDA. And as Deacons: Joseph PECCI; John NEWMAN; Joseph HERGENRÖTHER; Thomas ZIGLIARA. With the necessary and appropriate dispensations, derogations, and clauses. In the name of the Father, and of the Son, and of the Holy Spirit. Amen. FROM THE CONSISTORY ACTS. On May 12, 1879. The Most Holy Father, having already delivered the Address, proposed the following churches: The CATHEDRAL CHURCH of TUSCULAN, for the Most Eminent and Reverend Lord John Baptist, Cardinal Priest of the title of St. Callistus of

Translated by churchlatin.ai, a product of Boyne Archives

the same Holy Roman Church, relinquishing the aforementioned priestly title.

[*Latin ed. p. 589*]

From the Acts of the Consistory:

The CATHEDRAL CHURCH of Alban, 589, for the Most Reverend and Venerable Lord Dominic Gustavo Adulpho, titular of Saint Mary Transpontine of the same Holy Roman Church, a Cardinal Priest, to Cardinal d'Hohenlohe, with the aforementioned priestly title relinquished.

The ARCHIEPISCOPAL CHURCH of PETRA, in the territory of the infidels, for the Reverend Father Joseph Aggarbati, already Bishop of Senigallia.

The METROPOLITAN CHURCH of BENEVENTO for the Reverend Father Camillo Siciliano, of the House of Marchionibus di Rende, hitherto Bishop of Tricarico.

The EPISCOPAL CHURCH of ROSEN, in the territory of the infidels, for the Reverend Father Peter Rota, already Bishop of Mantua.

The CATHEDRAL CHURCH of CATHAREN for the Reverend Father Casimir Forlani, hitherto Bishop of Comano, by the nomination of His Imperial Majesty Francis Joseph I, Emperor of Austria, King of Bohemia and Hungary, and also King of Dalmatia, by virtue of an Apostolic Indult.

The EPISCOPAL CHURCH of CALLINICEN for the Reverend Father Aniceto Ferrante, already Bishop of Callipoli.

The CATHEDRAL CHURCH of MANTUA for the Reverend Father John Mary Berengo, hitherto Bishop of Atri.

The CATHEDRAL CHURCH of SAVONA and NATJLEN, perpetually and canonically united, for the Reverend Father Joseph Barraggini, a priest of Genoa, appointed in the fiftieth year of his age, a Doctor of Sacred Theology and of both Laws.

The CATHEDRAL CHURCH of CONVERSANO for the Reverend Father Augustus Antonini Vicentini, a priest of Aquila, appointed in the fiftieth year of his age, and granted a doctorate in Sacred Theology.

The CATHEDRAL CHURCH of GALLIPOLI for the Reverend Father Fr. Iesualdi a Cardinale, in the world Nicholas Loschirico, a priest of the diocese of Squillace, and expressly professed in the Order of the Minor Brethren of Saint Francis of Assisi. Among the brethren, he served as a professor of philosophy and theology, and five times renounced the office of Provincial Minister of the same Order.

The CATHEDRAL CHURCH of SENIGALLIA for the Reverend Father Francis...

[*Latin ed. p. 590*]

From the Acts of the Consistory, 590: The Reverend Monsignor Latoni,

Translated by churchlatin.ai, a product of Boyne Archives

a priest from Perugia, was appointed, having reached the age of eighty. Until now, he held the dignity of Canon in the Patriarchal Archbasilica of the Lateran, and he was honored with the title of Prelate. He was elected Auditor by the Most Blessed Pope Pius IX, and he was also granted this honor by the Supreme Pontiff Leo XIII.

The Cathedral Church of Ancona, with the attached title of "Ecclesia Humana," was assigned to the Reverend Father Achille Manara, a priest from Bono, upon reaching the age of fifty, and who had previously been awarded a doctorate in theology and law.

The Cathedral Church of Albenga was assigned to the Reverend Father Philip Allegro, a priest of the Diocese of Albenga, upon surpassing the age of fifty.

The Cathedral Church of Adrian was assigned to the Reverend Father Joseph Apollonio, a priest from Venice, upon surpassing the age of fifty.

The Canon of the Penitentiary, previously holding this office in the Patriarchal Basilica, has been assigned to the Academy of Philosophy of Saint Thomas Aquinas, and is also a Protonotary Apostolic, serving as an examiner for participants and synodal delegates.

The Episcopal Church of Troaden, in the territory of the infidels, was assigned to the Reverend Father Placid Petacci, a priest from Rome, as a suffragan bishop to perform pontifical and other pastoral duties in the city and diocese of Sabina. He previously held the office of Canon in the Patriarchal Basilica of Saint Mary Major, and had relinquished the Vicariate of the City.

The Episcopal Church of Tanen, in the territory of the infidels, was assigned to the Reverend Father Elias Bianchi, a priest from Alexandria, as a suffragan bishop to perform pontifical and other pastoral duties in the canonically united Churches of Ostia and Veliterna, and their respective dioceses. He has been co-opted among the domestic Prelates and Protonotaries Apostolic of His Holiness.

The Episcopal Church of Dioclea was assigned to the Reverend Father Felice Gialdini, a priest from Pescia, as a coadjutor bishop with the right of succession, to the Reverend Father Aloysius Maria Paoletti.

[*Latin ed. p. 591*]

From the Consistorial Acts, 591, concerning the Bishop of Montepulciano, who, having expressly given his consent for this purpose, requires the assistance of another due to his advanced age, in order to perform the pontifical and other pastoral duties in that city and diocese.

EPISCOPAL CHURCH OF THE ANTI-PATRIARCHATE, in the territory of the infidels, for the Reverend Emmanuele Anthony Bandini, a priest from Lima, having already surpassed his sixtieth year. Having recently received the doctorate in Sacred Theology, and having served as a parish

Translated by churchlatin.ai, a product of Boyne Archives

priest and a vicarious forane, he has resigned from his position as a Synodal Judge and Archdeacon in that Metropolitan See.

CATHEDRAL CHURCH OF THE ARMENIAN-MELKITE RITE, or ZAMOSC-URZED, for the Ruthenian Greek-Catholic rite, for the Reverend John Szabó, a priest of the Diocese of Magno-Varad, by the nomination of His Sacred Majesty Francis Joseph I, Emperor of Austria. Having obtained the doctorate in Sacred Theology, he was elected as a Consistorial Assessor and a pro-Synodal Examiner; having held the position of Vicarious Capitular until now, he has resigned.

EPISCOPAL CHURCH OF THERMI, under the Archbishop of Caesarea, in the territory of the infidels, for the Reverend Caietano Ratta, a priest from Bologna, appointed as an auxiliary to the Reverend and Most Reverend Lord Lucidi Maria, a Cardinal Priest and Parish Priest, and Archpriest of Bologna, to perform the pontifical and other pastoral duties, with his consent and willingness, in that city and Archdiocese. He was a professor of moral theology at the University of Bologna, President of that theological college, Primicerius of the Basilica of St. Peter, and has resigned from his position as Vicar General until now.

CATHEDRAL CHURCH OF ANNECY, for the Reverend Aloysius Isoard, a priest of the Diocese of Soissons (-Laon-Saint-Quentin), by the nomination of the most illustrious Monsieur Jules Grevy, President of the French Republic. Having recently received the doctorate in both civil and canon law, he was included among the Domestic Prelates of His Holiness and the XI Men of the Sacred Council for judging litigations in Rome.

CATHEDRAL CHURCH OF MAGNO-VARAD, for the Ruthenian Greek-Catholic rite, for the Reverend Michael Taver, until now...

[*Latin ed. p. 592*]

From the Consistorial Acts: To the Armenian Bishop, for the presentation of Francis Joseph I, Emperor of Austria. The CATHEDRAL CHURCH of St. Majesty in LITOMERITZ, for the Reverend Anthony Frind, a priest of Leitmeritz, by the nomination of Francis Joseph I, Emperor of Austria. He, having been chosen as a professor in the Leitmeritz gymnasium, and having previously been a canon in the metropolitan church, has now renounced these positions. The CATHEDRAL CHURCH of CRACOW, for the Reverend Father Albino Dunaiewski, by the nomination of the Emperor of Austria, with the force of an Apostolic Indult. Having surpassed the sixtieth year of his age, he is the Rector of the Seminary of Warsaw, a professor of moral theology, and is among the domestic prelates of His Holiness. By a Brief, the following churches have been provided: The ARCHIEPISCOPAL CHURCH of CARTAGENE, in the infidel territory, has been granted to the Reverend Father Peter Rota, a bishop who had resigned from the Church of Mantua, which he retains in temporary administration. The METROPOLITAN CHURCH of SMYRNA, in the

Translated by churchlatin.ai, a product of Boyne Archives

infidel territory, has been granted to the Reverend Father Andreae Timoni, transferred from the Church of Chien. The METROPOLITAN CHURCH of DUBLIN, has been granted to Edward Mae, Auxiliary Bishop of Gadara, in the infidel territory, formerly a Reverend Father in Dublin, transferred from the Church. The METROPOLITAN CHURCH of SCOPIE, has been granted to the Reverend Father Fulgentio Czarew e Minor, of the Order of St. Francis. The CATHEDRAL CHURCH of ARDAGH, has been granted to the Reverend Father Bartholomew Woodloch, a domestic prelate of His Holiness, Rector of the Catholic University of Ireland, and to whom a doctorate in sacred theology has been conferred. The CATHEDRAL CHURCH of AUCOPOLITAN, has been granted to the Reverend Father Walter Steins, of the Society of Jesus, who had previously been the Apostolic Vicar of Calcutta, transferred from the Archiepiscopal Church of Boston, in the infidel territory. The CATHEDRAL CHURCH of CHIEN, has been granted to the Reverend Father Ignatius Giustiniani, transferred from the Churches of Tenen and Miconen.

[*Latin ed. p. 593*]

593 From the Acts of the Consistory of the Cathedral Church of Saint-Denis, in the Greek Archipelago, the Reverend Father Anthony Galibert was appointed. In the Cathedral Church of Hartford, in the United States, joined in federation, the Reverend Lawrence MacMahon, General Vicar from the Diocese of Providence, was appointed. To the United Churches of Mariopol and Marquette, in the United States, the Reverend John Vertin was appointed. To the Cathedral Churches of Tenen and Micon, the Reverend Michael Castelli was appointed. To the Cathedral Church of Rapoten, in Ireland, the Reverend Michael Logue was appointed, having been awarded a doctorate in Sacred Theology. To the Cathedral Church of Olympien, in a pagan region, the Reverend Amand Lamaze was appointed, as Delegate Vicar Apostolic of Central Oceania. To the Episcopal Church of Aenen, in a pagan region, the Reverend Louis Mary Galibert was appointed, as Delegate Vicar Apostolic of Eastern Concinsna. To the Episcopal Church of Bolinen, in a pagan region, the Reverend Constant Dubail was appointed, as Delegate Vicar Apostolic of Mandehuria. To the Cathedral Church of Paphen, in a pagan region, the Reverend Paschal Guerini was appointed, having been awarded a doctorate in Sacred Theology, and appointed as Honorary Prelate to His Most Reverend Archbishop of Antibari and Scodra. To the Episcopal Church of Corycen, in a pagan region, the Reverend Edmund Knight was appointed, as Delegate Auxiliary Bishop of Shrewsbury. Acts, Volume XL, page 132.

[*Latin ed. p. 594*]

FROM THE HOLY CONGREGATION, A DECREE by which an indul-

Translated by churchlatin.ai, a product of Boyne Archives

gence of three hundred days is granted to those who, after reciting the prayer "May she be blessed," etc., add the words "Mother of God." LEO XIII, POPE. FOR PERPETUAL REMEMBRANCE.

Having been recently petitioned to foster and encourage devotion to the Immaculate Virgin Mary, Mother of our Savior Jesus Christ, We have decided to grant indulgences to the faithful who, after reciting the prayer – "May she be blessed, the Holy, Immaculate, and most pure Conception of the Blessed Virgin Mary" – add the words "Mother of God," so that We may dispense the heavenly treasures which the Most High has entrusted to Us. Furthermore, sublime mysteries are contained in this prayer, namely, that it recalls that Mary, from the very moment of her conception, was free from the guilt of the first parents, and the words which are now to be added, "Mother of God," recall the divine motherhood, without detriment to her virginity, so that no praise could be more glorious, no more pleasing, to such a Mother. Therefore, We, eager to honor the Most Holy Virgin, Mother of God, Immaculate, and to promote the greater good of the Christian faithful, and even to make amends in some way for the injuries which impious men, especially in these most grievous times, have dared to inflict upon the Immaculate Virgin Mary, Mother of our Savior and our most sweet and beloved Mother,

[*Latin ed. p. 595*]

The Bull 595 declares that, having considered the petitions presented, We, with a benevolent mind, decree, and, confident in the mercy of Almighty God and in the authority of the blessed Apostles Peter and Paul, We grant to all and to each sex of the faithful Christians, who, at least in their hearts, are contrite at every time and in every language, provided that the translation is faithful, that after the aforementioned recitation of the rosary, they add the words "Mother of God" three hundred times during the indulgences prescribed to them, or in any other manner of prescribed penances, in the usual form of the Church, We grant a remission of these penances; and We declare that these remissions of penances may also be applied to the souls of Christian faithful who, united with God in charity, have departed this life, as a form of suffrage. In the contrary, these present decrees are valid forever, for all times present and future. We command that a copy of these present Letters (which, if this is not done, We will consider to be null and void) be presented to the Secretary of the Congregation for Indulgences and Sacred Relics, according to the Decree issued by that same Congregation on January 19, 1756, and approved by Our Predecessor, the Most Reverend Benedict XIV, on the 28th day of that month; We also wish that to the transcripts or copies, even printed, of these present Letters, signed by a public Notary and sealed with the seal of a person holding an ecclesiastical office, the same full faith be given as would be given to these present Letters themselves, if they were exhibited

Translated by churchlatin.ai, a product of Boyne Archives

or shown. Given at Rome, at St. Peter's, under the Fisherman's Ring, on the 7th day of September, 1878, in the first year of Our Pontificate. For the Lord Cardinal ASQUINIO. L. © S. D. Iacobini, Substitute.

[*Latin ed. p. 596*]

FROM THE HOLY CONGREGATION OF THE COUNCIL FOR DISTRIBUTION. July 20, 1878. Summary of the Case. Two Canons of the Cathedral Church, during a fierce war in Spain, in order to avoid the threats and exile that already loomed over them, sought refuge in the territories of Charles VII. After the war, they were compelled to go to French regions. Meanwhile, the Government deprived the Canons of the revenues from their prebends, leaving only one-third of the revenues to the Chapter to satisfy its expenses and to pay daily distributions. When the Chapter returned to their homeland, it refused to give to the two Canons what remained from the one-third of the revenues, after deducting the expenses: 1) Because, due to their absence, it had not been made known to them, either officially or unofficially, that they were to receive anything. 2) Because, for a whole year and beyond, they were voluntarily absent, after the war had ended. Considering themselves to be unjustly treated, these Canons appealed to the Holy Congregation, asking to have it declared: Do the Canons have the right to one-third of their prebend, after their expenses are paid, for the entire period of their absence, since that absence was involuntary and, therefore, legitimate? The Prelate, consulted on the matter, stated that these Canons had not rashly feared exile or deportation, which they avoided by fleeing to the territory of the Lord Charles; and that the Chapter was prepared to give them the aforementioned distributions, provided that it were declared permissible by the Holy Congregation.

[*Latin ed. p. 597*]

Distribution, Section 597, a summary. THOSE THINGS WHICH ARE OPPOSED TO TWO CANONICALS. - IT IS OFTEN ESTABLISHED IN LAW THAT ONLY THOSE PRESENT AND PARTICIPATING IN DIVINE OFFICES ARE ENTITLED TO THE BENEFITS OF DISTRIBUTION. BONIFACE VIII, in chapter one, concerning non-resident clergy, states: "We decree that distributions cease to be given to canons, unless they are present, BECAUSE these daily and other beneficial things of the Church are given to those who contribute." THE COUNCIL OF TRENT REVOKED THIS DECREE AND ORDERED IT TO BE OBSERVED, DESPITE WHATEVER STATUTES AND CUSTOMS MAY EXIST, in chapter 12, session 24, concerning reform. THEREFORE, THE CONSTANT PRACTICE OF THE HOLY CONGREGATION, AND THE UNANIMOUS OPINION OF DOCTORS, HOLD THAT DISTRIBUTIONS TO CLERGY SHOULD BE MADE IN PROPORTION TO THEIR SERVICE, AND NOT WITH RESPECT TO THEIR TITLE; NOR SHOULD THEY BE GIVEN

Translated by churchlatin.ai, a product of Boyne Archives

AS TO A CANON, BUT RATHER AS TO ONE SERVING IN DIVINE OFFICES. BENEDICT XIV, Institutes, 10/n. 38, PITON, Disputations on Ecclesiastical Matters, n. 33. ROTA, decisions, 68p, n. 7, part. J, rec. NOW, IN FACT, IT IS CONSIDERED THAT CANONS, DURING THE ENTIRE PERIOD OF THEIR ABSENCE, HAVE RENDERED NO SERVICE TO THE CHURCH TO WHICH THEY ARE OBLIGATED; AND THEREFORE, THEY CANNOT PARTICIPATE IN DAILY DISTRIBUTIONS. IN THE CASE OF CANONICAL, LEGITIMATE ABSENCE, THERE IS NO CAUSE THAT WOULD ALLOW THEM TO RECEIVE DISTRIBUTIONS, AND EVEN IF SUCH A CAUSE EXISTED, THE LICENSE OF THE BISHOP AND CHAPTER WOULD STILL BE NECESSARY FOR THIS, IN ORDER THAT THE ABSENT PERSON, HAVING A LEGITIMATE CAUSE, MAY BE ENTITLED TO RECEIVE THE BENEFITS OF DISTRIBUTIONS. Gloss, in chapter "relatum" of the collection of prelates concerning non-resident clergy. THEREFORE, IT IS NOT ENOUGH TO HAVE IMPLICIT LICENSE, BUT IT MUST BE EXPRESS. PIGNATELLI, Consultations, 36, n. 2, volume 3. "CONCERNING A JUST CAUSE, THE TEXT STATES: 'AD d. cap. one, concerning non-resident clergy, after the middle. THERE: EXCEPT 'THOSE FOR WHOM INFIRMITY, OR JUST AND REASONABLE NECESSITIES OF THE BODY, OR CLEAR BENEFIT TO THE CHURCH, WOULD EXCUSE THEM.' THE COUNCIL OF TRENT REVOKED THIS STATEMENT IN SESSION 24, CHAPTER 12, AND THE HOLY CONGREGATION OF BISHOPS IN LANCIANO, ON APRIL 4, 1607, DECLARED..."

[*Latin ed. p. 598*]

Distributiones 598: "Stating that a just cause must be approved not only by the Chapter but also by the Ordinary." One may not appeal to the grace [of the Pope]; for the Pontiff does not write in prejudice of chapter three, aforementioned, concerning privileges. Although, at the end of the rescript, in paragraph 6, Lambertini affirms in *De Jure Patrono*, book 2, page 3, question 0, that prejudice is present, not only with respect to the Church, which is deprived of certain services, but also with respect to the participants, to whom these distributions ought, by right, to accrue, as stated in the Council of Trent, Session 21, chapter 3, concerning reform. Pigliateli, *Consultationes*, 144, number 17, volume 1. If it were to be said that time was pressing, this dispensation could not have been obtained; this may have been true for the time during which the war was waged, but not for a later time; and since the canons had been granted an indulgence by the Government, they were able, by right, to return to the country. And therefore, at least for that time, a legitimate cause was lacking.

THINGS THAT FAVOR THE CANONS. – It should not be forgotten that there are three causes, by law, under which not only do those who are absent enjoy the fruits of their benefice, but also receive daily distri-

Translated by churchlatin.ai, a product of Boyne Archives

butions. These causes are enumerated by Boniface VIII in the aforementioned decree, and are infirmity, a just and reasonable necessity of the body, and evident utility to the Church. That the canons in question may excuse themselves based on a just and reasonable necessity of the body is easily demonstrated by the Sacred Congregation of Councils, which, in Fondi on July 3, 1733, and in Carpentras on September 12, 1616, held that a canon absent due to animosities, or due to fear of the temporal prince, is, as one absent for a just cause, to receive the daily distributions and fruits according to the norm for those absent due to infirmity. The intention of the Pontiff, as the Sacred Rota states in *Molines*, decree 808, numbers 8 and following, in the aforementioned single chapter, "was to exclude those who neglect or despise [their duties] from receiving [distributions], not those who are impotent, and impotence is said to be when the absence is not voluntary, but is caused by some circumstance, so that it does not prevent the canon from residing." Regarding the granting of permission to two canons by the Bishop or by the Chapter, Pignateli responds in the aforementioned passage, number 4, as follows:

[*Latin ed. p. 599*]

Concerning the dispensation to be obtained from the Bishop and Chapter: It is necessary to state, regarding the obtaining of permission, that according to the decree of the Council of Trent, Session 23, chapter 1, concerning reforms, it is only necessary for Bishops and Curates, but not for Canons who do not exercise the care of souls, provided they have a legitimate cause of absence permitted by law, as stated by Bartholomew in *De S. Faustino*, in the third book of Canon Hours, question g, and by Rice in *Collectanea Decisorum*, 2432, and by Barbos in *De Canonibus et Dignitatibus*, chapter 4, paragraph 26. Therefore, in order that daily distributions be owed to a Canon absent for a just cause, it is sufficient that he make his protests, at least if the cause is not notorious; otherwise, when the cause is notorious, as the Rota states in Farina, page 2, volume 1, decision 244, number 1.

Furthermore, it is prudent for Canons not to readily believe in a dispensation, for it would be foolish to immediately trust in the words of those offering generosity, as sad experience has later taught. Many of those who were so readily granted such clemency were soon burdened with penalties and hardships.

With these premises established, the following question was proposed: Whether and how the right to distributions applies to Canons absent for a just cause.

RESOLUTION. The Sacred Congregation, after mature deliberation, on July 20, 1878, responded to the proposed question: Affirmative, for the entire period of absence, with the exception of stipends for Masses and other expenses.

FROM WHICH THE FOLLOWING IS GATHERED: I. Distributions are

Translated by churchlatin.ai, a product of Boyne Archives

due by law only to those who are present to perform divine offices; therefore, they are not due to two Canons whose flight from a small city was so widespread that it was known to everyone.

[*Latin ed. p. 600*]

600 rations are distributed to a cleric either in respect of his benefice, or as a Canon, but as one serving in divine offices.

I. Therefore, the Tridentine Council, Session 24, chapter 12, concerning the restoration of ancient practices, decreed that the decree of Boniface VIII, "Consuetudinologum," should be observed, which states: "But those who have been absent at the appointed hours shall receive [rations], and the rest, unless excused by some valid reason, shall be deprived of them."

II. It is not permitted for the Chapter, under any pretext, to grant, leave, or remit, through any collusion, the daily rations to anyone who has been absent from the service of the Church, or in any other way ought to lose his legitimate rations.

IV. However, just as the most loving Mother Church, with humanity and piety, cares for those afflicted by illness, granting them these rations as if they were present in the choir, so she acts towards those who, due to a legitimate impediment of the body, are unable to attend divine offices.

V. Therefore, a Canon who, out of just fear of enemies, does not leave his house, or has been unjustly exiled from his place of residence, should not be deprived of his rations, since natural law dictates that no one should be punished without fault.

VI. The spirit of this ecclesiastical discipline is that those who are negligent or who despise residence should be excluded from the rations, but not those who are infirm, or who are absent through involuntary circumstances.

VII. Canons in a certain place had abandoned their homeland and gone into exile due to the enmity of factions; and therefore, they are excused. Ivo of Chartres, in Epistle 219 to Pope Paschal, speaks of such rations which he himself instituted: "Since among many of the Canons of Chartres, the observance of the regular discipline had fallen into disuse, so that the diligent were treated as the negligent, and the assiduous as the tardy in attending the canonical hours, I decided to grant them half of the prebend, so that those who were diligent would receive daily bread, while the tardy would lose it; so that those whom the sweetness of external rewards did not move, might be incited by the restoration of bodily nourishment, although their annual prebend was sufficient for this purpose."

The pontifical law established this, and the Tridentine Council con-

Translated by churchlatin.ai, a product of Boyne Archives

firmed the same discipline.

[*Latin ed. p. 601*]

Distributiones 601, adest autem chorus, et per justum et legitimum impedimentum corporis, quasi excusationem, tempore quo pestis vehementer grassaretur. VENIA AD MATRIMONIUM. PER SUMMARIA PRECUM. Die 14 decembris 1878. Compendium facti. Nobilis Comes L. Z., cum iam per sex annos vitam degerit cum mulieris sibi matrimonio devinctae; et hoc tempore, pluries, sed perperam, matrimonium consummare conatus sit, dissolutionem vinculorum petiit ab Archiepiscopali Curia. Haec, per formale iudicium, sententiam protulit: matrimonium esse nullum propter viri impotentiam antecedentem, absolutam atque insanabilem; cautumque fuit ne comes ad alias nuptias convolare posset. Aegro tulit animo Comes secundam sententiae partem; ideoque recursum habens apud S. C. Congregationem, enixis viribus quaesivit ut sententia Curiae Archiepiscopalis infirmaretur in ea parte, qua sibi vetitus fuit ad alias nuptias transire. Sacra vero C. C. respondit: sententiam Curiae esse reformandam, ita ut Corniti L. Z., non liceat transire ad alias nuptias, nisi petita prius et obtenta venia ab Apostolica Sede. Quae resolutio confirmata fuit in Congregatione diei 23 martii 1879. 1 Hinc supplici dato libello petiit Comes facultatem ad alias nuptias convolandi, asseverans matrimonium antecedens resolutum fuisse ob arctitudinem mulieris et ob adversionem coeundi, qua mulier illa laborabat. Sese tamen, haud laborare impotentia absoluta ait, conatusque est id probare per novas medicorum depositiones. Adiecit quoque decipere aliam mulierem, catholicam Religionem haud sibi permittere; neque se 1 Synopsis huius matrimonialis quaestionis prostat pag. 134, vol. XI.

[*Latin ed. p. 602*]

Veniae 602 wished, with danger to her conscience, to live a life in solitary confinement, all the more because she lacked brother and sister. Expert physicians report the man to be healthy, and exceedingly robust, and to carry no abnormality with him; and the witnesses are scant concerning the size of his body; but he is deemed fit for cohabitation, and for procreating children from his seed. The Ordinary also recommended the Count. A concise discussion. THOSE THINGS WHICH FAVOR THE PHYSICIANS' OPINION, GRANTED. The Count's counsel argues, with the testimonies of those who report the man to be capable of copulation and fit for procreation, that his impotence was relative, and that the antipathy to cohabitation, with which the wife suffers, was increased. Therefore, the aforementioned clause should be entirely removed, because, since his physical structure is normal, and contrary to the presumed judgment of nature, the judge should not be quick to judge according to what is stated in Ancharanus, chapter "Laudable concerning frigidity," and maleficia; but rather,

Translated by churchlatin.ai, a product of Boyne Archives

the opinions of experts should be given the greatest weight, and because, in this judgment, those who deemed him fit for copulation have testified. Since the Count's mental strength is also confirmed by newly presented documents, therefore, the Counsel says, his prayers should be received, lest he be led to a great disturbance of conscience, due to perpetual continence. And this has been done in more difficult cases by the Sacred Congregation of the Council, as the Bononians testify. Marriage: the free day of marriage was April 23, 1842; September 24, 1864; September 4, in Potenza; Relations from Venice to Naples, in 1875. With these things noted, the matter was referred to the judgment of the Most Eminent and Constant Congregation to decide what should be responded to the Count's prayers. RESOLUTION. The Sacred Congregation, after deliberation on December 16, 1878, decided to respond as follows: 1. To the judgment and conscience of the Bishop. It is customary for the Holy Congregation of the Council, when a marriage is dissolved due to impotence, to add a clause prohibiting the spouse from entering into other marriages, if there remains a doubt that the impotence is absolute and perpetual.

[*Latin ed. p. 603*]

FROM THE SACRED CONGREGATION OF BISHOPS AND REGULAR CANONS. September 20, 1878; December 20, 1878; and March 14, 1879. Summary of the case. A parish priest from the Diocese of 5, in order to defend his rights and those of his parish, which had been unjustly taken away from him, appealed to the Holy See, claiming that the parish, which had been granted to him by the Bishop, included the church of E. and the rectory of R. He stated that the church custom was that the Gospel should be read in each Mass, and that the parish priest had always followed this custom, even on weekdays and during Lent, and that the church was not to be used for the celebration of Mass on Sundays by anyone other than the parish priest: the ringing of the bells, the parish Mass, as they say, and no special Mass, under any pretext whatsoever, could be celebrated in that church by anyone, even if the Ordinaries themselves resided there; the ringing of the bells for an extraordinary Mass was also forbidden. Now, these constitutions, which are part of the diocesan ecclesiastical laws, are said to be disturbed by religious orders who claim to have 3400 faithful under their jurisdiction in that city, dating from the year 1875, and that the collegiate church, and the parish Mass, are to be celebrated by them. The Congregation does not consider this to constitute a significant impediment to the fulfillment of the aforementioned functions, but rather a simple prohibition; thus, whoever disregards this prohibition by celebrating Mass, would act illicitly, but validly. However, when permission to marry is granted by the Sacred Congregation to a man whose impotence has not been clearly proven, it is also often granted to a widower. In this case, the impotence of the man was considered to be relative, and the Sacred Congregation did

Translated by churchlatin.ai, a product of Boyne Archives

not deem it necessary to add any limitations; but the matter was left to the prudence and conscience of the Bishop, who knew the petitioner well, and for whom he had already prayed to the Sacred Congregation.

[*Latin ed. p. 604*]

Regarding sixty-four sacred functions, and considering the prayers of the priest to be of no value, they wish to celebrate, either before or during the time of the parish Mass, with the ringing of bells. Consequently, the objective of the divine word is frustrated, as experience teaches; for the people, especially during the summer months, prefer to attend Mass in the churches of the Regular Orders rather than in the parish church, where the word of God is proclaimed. It should not be overlooked, the priest added, that there are two religious houses in this city; one of the Dominicans, the other of the Franciscans of the Observance. In order that the spiritual detriment to the entrusted people may not occur, he proposed three questions, which we write down here, suitably modified. The Sacred Congregation, in a matter of such importance, sought the opinion of the Bishop, as well as of the Superiors General of the Preachers and the Minor Observants. We will briefly summarize what was said by them regarding the Observants and the two consultants, concerning the three proposed questions. A synopsis of the discussion. THE OPINION OF THE BISHOP. Regarding the first question, the Bishop considered that it should be answered affirmatively, according to Benedict XIV, *Instituta*, 44, concerning Diocesan Synods, book 12, chapter 7, paragraph 7. The Bishop does not deny that Regular clergy enjoy privileges and exemptions; but he believes that it is proper to favor the opinion that, before establishing a contrary custom, and a practice whereby the word of God is explained only in the collegiate church, a great spiritual difference arises from a new custom. Secondly, he said that it is easily possible to respond, according to the canonical provisions which require no declaration from the Sacred Congregation, as found in *Urbin.* 1739; *Berbosa, de officio Parochi*, Benedict XIV, *Instituta*, 103, paragraph 32, and in the Diocesan Synods, book 1, chapter 13, paragraphs 4 and 3. Thirdly, he said that it should be resolved according to the Council of Trent, Session 22, concerning what should be observed and avoided in the celebration of Mass: "Each Bishop shall forbid in his diocese that any Mass be celebrated by a wandering and unknown priest."

[*Latin ed. p. 605*]

Sacred Functions 605. A GENERAL OBSERVANCE. This Rule stipulated that Regulars, during the parish Mass, could celebrate with the ringing of bells, according to the authority of Pope Pius V. However, concerning the contrary custom, he stated that it could not be observed, since the Regulars had already issued a protest against it. Therefore, the ringing of bells during the parish Mass cannot be permitted, so that the explanation of the divine

Translated by churchlatin.ai, a product of Boyne Archives

word may not be hindered. He also judged that it could not be forbidden to celebrate Mass during the parish Mass, by virtue of the aforementioned privileges. Regarding the second question, concerning only the Regulars, he speaks of introducing extraordinary functions, altering customary practices, and processions. And concerning the two previous points, he judged that the Regulars could perform all functions in their churches; because the Apostolic See has only excluded from the general faculties the solemn and public exposition of the Most Holy Sacrament, as well as public prayers and collections, according to the decree of the Sacred Congregation of Rites of December 10, 1602. Regarding the last question, he agreed with the Bishop, adding the decree of the Holy Office mentioned at the end in a note. The General of the Dominicans adheres to this opinion, and added something about the privileges of his Order concerning processions of the Body of Christ, according to the Constitutions of Pope Pius V and Pope Clement VIII; and concerning the Most Holy Rosary, according to the Brief of Pope Benedict XIII, in the highest degree, April 1725.

OBSERVATIONS FROM THE OFFICE. Regarding the first question raised, it was stated that the ringing of bells has a relation to the outside, and is not an act that takes place within the confines of the Regulars. Therefore, in order that the force of discipline may not be broken, the Regulars do not seem to be exempt in this matter. And this seems to agree with the disposition of the law; by which it is stipulated that Orders of Mendicants may have only one bell. This prohibition may also refer to the ringing of a single bell; to the extent that it calls the people from elsewhere, and removes them from the explanation of the divine word. This agrees with the decree of the Sacred Congregation of Rites of December 10, 1703, and with the Episcopal jurisdiction of Cardinal De Luca, on jurisdiction, no. 10.

[*Latin ed. p. 606*]

606 Concerning Sacred Functions: "Bells ought to be rung to summon the people, since they are a kind of herald, calling the people to faith, and inviting them to the divine service; therefore, their care, administration, and jurisdiction ought to belong to the Bishop, to whom the Church belongs, and to whom it pertains to care for the spiritual welfare of the people, for which this usage has been introduced." It has also been noted that, on the other hand, some legal prohibitions have been modified over time; and it is known that Regular clergy in this city [Rome] have only one bell. And in Ferraris, volume 2, under "Campana" (Bell), number 16, various special privileges are found; and Saint Pius V, in the Constitution beginning with the words "Etsi Mendicantium" (§ 22), states: "Furthermore, we prohibit these Ordinaries and all other persons from hindering these brothers, whenever it pleases them, from ringing the bells, either on Sundays, or feast days, or on other days of the year, and also from celebrating Mass

Translated by churchlatin.ai, a product of Boyne Archives

at the time when they have celebrated." Indeed, before the Parish Priests celebrate, according to Pius V, § 8 of the same Constitution, "Etsi Mendicantium," there: "Nor shall they celebrate Masses and divine services of this kind, even on Sundays or feast days, even before the Rector of the Parish Church has celebrated, and to do so when it seems good to them." Sacred Congregation, October 1, 1586: "Ordinaries should not hinder the brothers from ringing the bells for Matins, the Hours, and Mass, except before the bell of the larger church is rung, except on the Lord's Day."

OPINION OF THE CONSULTOR. The first question, he says, concerns, in the first part, secular priests, and in the second part, Regular clergy. The first part is so general that it also includes Canons; therefore, it is to be wondered at that the Bishop should raise in doubt the right of the Canons, by which they are called to the choir by the ringing of bells, and by which they are obliged to celebrate the conventual Mass, even during the time of the Parish Mass. The foundation of this question is laid by the Bishop, who places the burden on the parish priests of explaining the Word of God during the time of the parish Mass. But it is noteworthy that... [The passage ends abruptly here.]

[*Latin ed. p. 607*]

Sacrarum functionum 607, Sess. 22, thus addresses the Parish Priests: "They should exhort (the faithful) to frequently attend their parishes, at least on Sundays and major feasts." With these words, the faithful are not obligated to attend the parish church, but are rather encouraged to do so. Indeed, Pope Benedict XIV, in his Decrees for the Dioceses, Book I, chapter 14, § 10, states that the people are to be drawn to this by exhortations, not by a command. However, if the hypothesis is made that a positive answer should be given, then the Bishop, building upon the exhortation given to the faithful after the Council of Trent, namely, to attend the parish Mass, could decree that the canons be summoned to the choir and to the conventual Mass by the ringing of the bells, to which they are legally bound.

After Pope Benedict XIV had spoken of the power that Regular clergy have, both to celebrate Mass and to ring the bells, he posed the question to himself: "But what is to be said concerning 'other churches, which have not been granted any privilege or right by the Apostolic See'?" To which he replied: "It is entirely proper for all, in any church, to participate in the sacred mysteries, provided that it is not a private chapel or oratory; for, contrary to the custom universally received throughout the Christian world, it is not lawful to disregard the obligation of attending the parish Mass." And Barbosa, in Collet, ad Trid. Sess. 22, says: "It is not possible for a Bishop today to command his subjects to attend the parish Mass, because he cannot abolish a custom that, while it was in force throughout the world, has now taken on the nature of common law."

The right to ring the bells and to celebrate Mass at a time of their choosing

Translated by churchlatin.ai, a product of Boyne Archives

is granted to Regular clergy by Pope St. Pius V through the Constitution *Etsi Mendicantium*. This Constitution is confirmed by the resolutions of the Holy Congregations, as can be seen in a document from Turin, September 29, 1742, of the Sacred Congregation of Rites, and in the document of the Sacred Congregation of Councils, in the commentary on funerals and parochial functions, paragraph 1, decision 8, of December 1750, and in the document from Acqui, May and June 1760; for the proposed question was: "Can the Carmelite Fathers give the signal of the bell and celebrate Mass on feast days, at the same time or at different times?"

[*Latin ed. p. 608*]

608 Regarding the sacred functions: "Before the sign is given and the parochial Mass is celebrated," the response was: Affirmative. Regarding what pertains to the secular clergy, a suitable resolution exists from the Sacred Congregation of Councils, dated July 1682, concerning the province of Calabria. Indeed, concerning the doubt: "Can the Ordinary order the pastors of other non-parochial churches within the same territory and district not to celebrate Mass before the conventual Mass has been completed, which is celebrated daily in the said parochial church?" On a certain day, the Sacred Congregation judged: "The Ordinary cannot prohibit this." Regarding the first part of the second doubt, that is, regarding extraordinary functions, the Consultor judged that it should be said as follows: that these functions can be introduced, insofar as they do not oppose the rite of the Church, do not infringe upon the rights of others, nor have been prohibited by Councils, or by Holy Pontiffs, nor by decrees of the Sacred Congregations. For the Church is to be administered so that the piety of the people may be aroused; and therefore, any function can be performed, provided that certain conditions are met. For example, if someone in a secular or regular church wanted to sing Masses, recite the offices, and say the Rosary, or perform the functions of Palm Sunday and Ash Wednesday, which had never been performed in those churches, could it be said that he could not introduce these extraordinary functions? Such functions, performed for the piety and devotion of the faithful, in no way infringe upon parochial rights. Therefore, the Consultor judged it appropriate to respond to the first part of the doubt, using the very words of Benedict XIV, in Instruction 105: "Furthermore," he says, "the Consistorial advocates, who presented their opinions for the sake of truth, asserted that no impediment can be presented to the parish priest to prevent these functions from being celebrated in other churches, even if they are located within the limits of his parish." In order that no doubt remain regarding processions to be performed by secular or regular priests, the Sacred Congregation of Rites issued a decree

Translated by churchlatin.ai, a product of Boyne Archives

on January 12, 1726, of the following tenor:

[*Latin ed. p. 609*]

Sacrarum functionum 609: "The Sacred Congregation judged that to Regular Canons and religious confraternities, it is permitted to perform processions only within their churches and cloister, and not outside. However, if the churches lack a cloister, it is permitted for the same Regular Canons and confraternities to perform processions only within the precinct of their churches, that is, near the walls of the church, and not outside said precinct, unless with the permission or consent of the Bishop, or with the parish cross, notwithstanding any customs or immemorial prescriptions. Only those Apostolic privileges which remain in full force, as determined by the Holy Council of Trent, are not considered to be diminished by this decree."

Another decree of the same Holy Congregation, dated December 10, 1602, contains an exception for Regular Canons regarding the exposition of the Blessed Sacrament. "It is not permitted for Regular Canons, even in their own churches, to publicly expose the Sacrament of the Most Holy Eucharist, unless for a public reason, which has been approved by the Ordinary. However, for a private reason, they may do so, provided that the Most Holy Sacrament is not removed from the tabernacle, and remains covered in such a way that the Host itself cannot be seen."

Finally, regarding the third question, the Consultor judged that a negative answer should be given, referring to the Council of Trent, Session 20, concerning what must be observed and avoided in the celebration of the Mass, and to the decree of the Sacred Congregation of the Inquisition dated August 11, 1649.

OPINION OF ANOTHER CONSULTOR. "The first question concerns secular churches and Regular Canons. Regarding these, the question of the ringing of bells and the celebration of Masses during the time of the parish Mass was resolved by Saint Pius V through the constitution *Etsi mendicantium*, dated May 16, 1567, which has been cited several times, and by the Sacred Congregation of the Council in the document *Nullius Provinc.* Ravenn., dated September 15, 1629. Regarding secular churches, it should be noted, with reference to Pope Benedict XIV, *De Synod. Dioec.*, book 12, chapter 7, paragraph 7: 'Although...'"

[*Latin ed. p. 610*]

610 Concerning sacred functions, « it can be prohibited by the Parish Priest that Masses be celebrated in public oratories, located « within the boundaries of his parish, before the « parish Mass... nevertheless, if the Bishop has ordered, either through a Synod or « even outside of a Synod, that the people not « attend the parish Mass and that the customary sermon not be given by the Parish Priest « in that Mass, the Bishop's command

Translated by churchlatin.ai, a product of Boyne Archives

shall prevail, and it must be obeyed. Also, according to the opinion « of the same Sacred Congregation ». The Consultor, concerning the second doubt, stated: The Apostolic See has imposed no limit on Religious Orders regarding functions performed within the churches themselves, except for the exposition of the Blessed Sacrament, public collections, and prayers, as decreed by the Sacred Congregation in 1602. Therefore, the Bishop cannot, with regard to such ordinary or extraordinary functions, as long as these do not infringe upon parochial rights. However, processions that are held outside of churches, generally cannot be held without the consent of the Parish Priest or the Bishop. Thus, it has been decided on several occasions by the Sacred Congregation of the Eastern and Roman Churches, especially in the matter of ecclesiastical functions in the sixth doubt, in Pienza. This is also confirmed by Pope Benedict XIV in Instruction 105, paragraphs 51 and 52. From this general rule, which prohibits Religious Orders from entering the parochial territory with processions, the Dominicans are excepted, with regard to the procession of the Most Holy Rosary on the first Sunday of October, and with regard to the procession of the Blessed Sacrament on the Sunday within the octave of the Body of Christ, according to the Bull *Brevis Bene dicti* XIII, of April 10, 1725. The Consultor also stated that, according to the decree of the Sacred Congregation of the City and the World in 1703, provision was made for any question of this kind that might arise in secular churches. The third doubt, the Consultor stated, should be applied, in addition to the sanctions of the Council of Trent, Session 20, concerning what must be observed and avoided in the celebration of Masses, and the Decree of the Holy Office of August 11, 1649, which has been cited on several occasions. With these things noted, the proposals were presented to the Sacred Congregation.

[*Latin ed. p. 611*]

Sacred Functions, Question 611. "I. Can the Ordinary, or his representative, prohibit the ringing of bells, before or during the parish Mass, in all churches of the diocese, performed by secular or religious priests? II. Can secular priests, chaplains, or rectors, or their respective regular superiors, introduce extraordinary functions, or alter customary ones, in their churches, or make processions without prior permission from the Bishop, or his representative? III. Can regular superiors admit an external priest to celebrate the Holy Mass in their own churches without prior permission from the local ecclesiastical superior?

RESOLUTION. The Sacred Congregation, after repeated discussions on March 14, 1879, decided to respond as follows: Regarding the first question: "Can the Ordinary prohibit the ringing of bells, before or during the parish Mass, in all churches of the diocese, performed by secular or religious priests?" Regarding secular priests, the Bishop should exercise his right, unless a praiseworthy custom or privilege prevents it. Regarding re-

Translated by churchlatin.ai, a product of Boyne Archives

ligious priests, the answer is negative, except for the Basilica of Saint Sabina. Regarding the second question: "Can secular priests, chaplains, or rectors, and can regular superiors, introduce extraordinary functions, alter customary ones in their respective churches, and make processions without prior permission from the Ordinary?" Regarding secular priests, the Ordinary should exercise his right, with the resolutions of the Sacred Congregations being observed, especially the Sacred Congregation of 1703 for the City and the World. Regarding the third question, see Volume I, page 591, in the note, where a decree containing thirty-three important questions regarding ecclesiastical functions can be found."

[*Latin ed. p. 612*]

Sacrarum functionum 612: «Regulars are exempted from affirmative obligations, with the resolutions mentioned above observed, except for processions outside the confines of the Church, provided that, for those processions, special privileges are granted.» And in III: «Let the Decree of the Holy Office be given.» From which [passages] one gathers: I. That Ordinaries must take care of whatever pertains to the worship of God within the Diocese, and, where necessary, diligently observe the resolutions of the Holy Congregations concerning secular churches, and especially the decree of the Congregation, of the City and the World, in the year 1703, by which provision was made for questions concerning the Sacred Rites that might arise in secular churches. II. That Bishops can, with regard to secular churches, order in Synod or outside of Synod, that Masses not be celebrated in public oratories before the parish Mass, nor that the parish Mass and the sermon be drawn away from the people by the parish priest in the usual manner; and obedience to the Bishop's command must be observed, as declared by the Holy Council itself. III. However, Bishops cannot prevent Regulars from ringing the bells in their own churches, except on the holy Sabbath, before or during the parish Mass, if the Ordinaries have prohibited it, lest the mendicant brothers, when they ring the bells on Sundays or feast days, or on other occasions, should cause the people to be distracted from the parish Mass, which ought to be celebrated, as is fitting, for the entire year, as Saint Pius V decreed, that it cannot be omitted. For the benefit of the faithful, this decree is mentioned. «On August 11, 1649, in the Congregation of the Holy Office, the Most Reverend Cardinals Inquisitors ordered that it be intimated to the Superiors of Religious Orders and to the Superiors of Monasteries and Convents, that they command their subordinates not to admit others, of their own or another Religion, vagrants, or pilgrims, to celebrate in their churches, unless they have been carefully examined regarding their letters of obedience, or their assignments from their Superiors, and regarding testimonials of their promotion to the priesthood; but those who are to be ordained to the secular priesthood, unless letters and testimonials have

Translated by churchlatin.ai, a product of Boyne Archives

been seen, signed by the Vicargeneral, or the archpriest of the place.»

[*Latin ed. p. 613*]

The contrary custom of interfering with the sacred functions, in any public church, which is in accordance with the nature of common law, prevails throughout the world. I. The Regular Orders, however, can perform functions, without the license of the Bishop, in their own churches, provided that the resolutions of the Holy Congregations are observed; and processions, except for special processions outside the church, are permitted; with the exception of the processions of the Body of Christ and the Most Holy Rosary by the Dominicans. II. Bishops have the power, even by virtue of the decree of the Council of Trent, Session 22, to order exempt Regular canons, under pain of suspension, which is incurred by the very act, not to allow any external priest to celebrate in their own churches, without the prior license of the Bishop. FROM THE DECISION OF THE HOLY CONGREGATION OF THE SACRED ROMAN AND UNIVERSAL INQUISITION ON A DOUBT. Whether baptism should be conferred under a condition to heretics who return to the Catholic Church from any sect. On November 29, 1878. The Most Reverend Fathers Inquisitors General, in the general Congregation on Thursday, November 20, 1878, gave a resolution to the doubt, whether baptism should be conferred under a condition to heretics. I. The more common opinion is that parishoners can fulfill the precept of hearing Mass not only in churches, but also in domestic and private chapels of the Regulars. Because these chapels enjoy a local privilege; while the privileges of secular chapels are personal, that is, only for those to whom they are granted. The chapels of the Regulars, however, are designated by their habit solely for divine worship.

[*Latin ed. p. 614*]

Decision 614 concerning those who return to the bosom of the Catholic Church, having come from any sect whatsoever. Then, they also considered a case of conscience presented by Gury, found on page 393 of the edition of Melita, 1878; and they decided that this same case should be corrected according to the terms of said decree. We, however, present to the readers both the case of the aforementioned author and the decree of the Holy Inquisition.

GURY - CASE OF CONSCIENCE - MELITAE 1878, PAGE 393. A Sabellian heretic comes to a parish priest and asks to be instructed and admitted into the Catholic Church. The priest, after instructing him, questions him about the baptism he received, and he cannot find any certain defect; hence, the heretic is hesitant as to whether he should baptize him under a condition, which he finally does, albeit with great anxiety.

R. The Sabellian could and should have been rebaptized, as the general practice of the Church dictates, because it is known that heretics often err

Translated by churchlatin.ai, a product of Boyne Archives

in administering baptism; therefore, heretics converted to the true faith are commonly rebaptized.

Thursday, November 20, 1878.

The following doubt was proposed: "Should baptism be conferred conditionally upon heretics who convert to the Catholic religion, no matter from what place they come, or to what sect they belong?" (In Latin: "An baptismum sub conditione conferri debeat haereticis, qui se convertant ad religionem catholicam, a quocumque loco proveniant et ad quamcumque sectam pertineant?").

The response was: "No." But in the conversion of heretics, whether they come from any place, or from any sect, inquiry must be made concerning the validity of the baptism received in heresy. Therefore, in each case, an examination should be instituted; if it is found to be either null or not validly conferred, they should be baptized absolutely. But if, after investigation, nothing is discovered, either for or against the validity, or if there is still a doubt about the validity of the baptism,

[*Latin ed. p. 615*]

Decision 615 remains in effect, and they shall be baptized under the condition of secrecy. Finally, if it is determined that the baptism was valid, they will be received only after an abjuration or profession of faith.

I. PELAMI, Notary of the Sacred Roman Universal Inquisition.

Decision regarding the explanation of transubstantiation in the Most Holy Sacrament of the Eucharist, made through four propositions.

The Superior General of the Society of Jesus humbly requests that the Most Holy Congregation of the Holy Office deign to declare whether the explanation of transubstantiation in the Most Holy Sacrament of the Eucharist, which is contained in the following propositions, can be tolerated:

I. Just as the formal reason of hypostasis is to be or to subsist by itself, so the formal reason of substance is to be in itself and not actually sustained in another as a primary subject; indeed, these two must be carefully distinguished: to be by itself (which is the formal reason of hypostasis) and to be in itself (which is the formal reason of substance).

II. Therefore, just as human nature in Christ is not a hypostasis, because it does not subsist by itself, but is assumed by the higher divine hypostasis, so finite substance, e.g., the substance of bread, ceases to be substance, solely and without any other change of itself, when it is supernaturally sustained in another, so that it is no longer in itself, but in another as in a primary subject.

III. Hence, transubstantiation, or the conversion of the entire substance of bread into the substance of the Body of Our Lord Jesus Christ, can be explained in this way: that the Body of Christ, while being substantially present in the Eucharist, sustains the nature of bread, which, by this very

Translated by churchlatin.ai, a product of Boyne Archives

fact and without any other change of itself, ceases to be substance, because it is no longer in itself, but in another sustaining it; and therefore, the nature of bread remains, but the formal reason of substance ceases in it; and therefore, there are not two substances, but one only, namely, the Body of Christ.

IV. Therefore, in the Eucharist, the matter and form of the elements of bread remain; but they now exist in another, supernaturally.

[*Latin ed. p. 616*]

Decision 616: Doubts concerning [these matters] do not have a substantial reason, but have a reason of a supernatural addition, not as if they affected the Body of Christ in the manner of teeth, but by means of natural [processes], namely, because they are sustained by the Body of Christ, as has been said. ROME, May 20, 1875, Thursday. IV, on July 7, 1873. IN THE GENERAL CONGREGATION OF THE HOLY ROMAN AND UNIVERSAL INQUISITION, held before the Most Eminent and Reverend Cardinals, Inquisitors General of the Holy Roman Church, after the aforementioned propositions had been read and considered, the same Most Eminent Lords said: The doctrine of transubstantiation, as it is explained here, cannot be tolerated. For the Lord, I. PELAM, Secretary of the Holy Roman and Universal Inquisition. James Vagaggini, Substitute. FROM THE HOLY CONGREGATION OF INDULGENCES, a decree is issued, granting to the Society, which bears the name "From the Adoration, etc.," the transfer of the Archiconfraternity attached to the same Society, and to unite with another Archisodalitas erected in Rome, in the buildings at the Four Fountains. The Society of Sisters, which bears the name "From the Perpetual Adoration of the Most Holy Sacrament and for the Instruction of Churches in Sacred Supplies to the Poor," founded in Belgium by the most pious Matron Anna de Meeûs, has recently established a house in this city, offering prayers to the Most Holy Lord, our Pope Leo XIII, that He may grant them the entire Archiconfraternity.

[*Latin ed. p. 617*]

617 It is decreed that the fraternity attached to the Society be transferred to Rome. This Arch-fraternity is united in name and institution with the Society, and is subordinate to the Society as its head, and is bound to be so by the Constitutions approved by the Holy See. The Most Holy [Pope] graciously accepting these petitions, ordered that the aforementioned Arch-fraternity be transferred to Rome. Indeed, since another Arch-fraternity of the same name and institution is already established here in Rome, in the buildings at the Four Fountains, under the care and direction of the pious and noble lady Carolina de Courballay, and since, according to a Constitution promulgated by Clement VIII, which begins "Quaecumque duae Archiconfraternitates eiusdem nominis et instituti nequeant in uno

Translated by churchlatin.ai, a product of Boyne Archives

eodemque Loco consistere" ["Whatever two Arch-fraternities of the same name and institution cannot exist in one and the same place"]; the same Most Holy [Pope], wishing to avoid this impediment of the law, decreed that the Arch-fraternity established in Rome, in the buildings at the Four Fountains, which was established later, be united with the one transferred from Belgica, so that they become one body, and constitute one and the same Arch-fraternity, to be the Arch-fraternity of the Society for the Perpetual Adoration and for providing sacred furnishings to the poorer churches. Furthermore, the communications of indulgences and privileges, which have been granted to the affiliated fraternities up to now, are to be considered as if they were granted from this union. Finally, the same Holiness granted this united Arch-fraternity the faculty of affiliating other fraternities of the same name and institution throughout the world, observing the form and tenor of the Constitution of Clement VIII, notwithstanding any rule concerning a matter of law that does not invalidate, and any other special and individual provisions worthy of mention and derogation to the contrary. For this reason, the Holy See ordered this decree to be made and communicated to those concerned. Given in Rome, from the office of the Sacred Congregation for Indulgences and Sacred Relics, on the first day of February, 1879. By the hand of L. Card. OREGLIA, Prefect. L. © S. A. Panici, Secretary.

[*Latin ed. p. 618*]

618 Decree: By this decree, it is permitted that the Archconfraternity of the Blessed Virgin Mary, "Sacred Heart of Jesus," be transferred from the Church of Saint Andrew in the Valley to the Church of the Blessed Virgin Mary in the Forum Agonalis. From the year 1854, a Society of Priests called "Exsokluni" began to flourish in the Archdiocese of Bourges in Gallus, who contributed strength, counsel, and effort to cultivate the Lord's vineyard, especially through missionary expeditions, and who are devoted to the Sacred Heart of Jesus. In order to obtain the help of the Mother of God, Mary, and to further their work, they sought refuge in Her protection, and began to venerate Her as our Lady of the Sacred Heart, commonly known as Notre Dame du Sacré Cœur, on the most auspicious day of December eighth, on which Her Immaculate Conception was proclaimed among the dogmas of the Faith. This devotion spread so quickly among the faithful that a Confraternity of the Most Blessed Virgin under the title of the Sacred Heart of Jesus was established in the sacred edifice of Exsoldun by ordinary authority on January twenty-ninth, 1864. The Apostolic See not only enriched this kind of Confraternity with abundant grants of Indulgences, erected it into an Archconfraternity, and granted the Archbishop of Bourges the faculty of placing a crown upon the image, but also established an Institute closely and indissolubly connected with this Confraternity. In the decree by which the Institute is praised, published by the Sacred Congregation of

Translated by churchlatin.ai, a product of Boyne Archives

Bishops and Regulars on March eighth, 1869, the Missionaries themselves are said to bear the name of OUR LADY OF THE SACRED HEART OF JESUS, and their church in Exsoldun was adorned by Pope Pius IX on July seventeenth, 1874, with the title and privileges of a Minor Basilica. Rome, which among other cities excels in devotion and piety towards the Mother of God, Mary, began to venerate the Holy Mother of God under the same title, and on December eighth...

[*Latin ed. p. 619*]

Decree 619, issued in the year 1872, established with due ceremony the Sodalitas Immaculatae Dominae Nostrae Exsoldunensis in the church of St. Andrew on the Quirinal Hill; to this Sodalitas, Apostolic Letters were granted on the eighth of July in the year 1873, allowing it to enjoy the Indulgences that had been granted to the Exsoldunensis Society; and by other Briefs issued on the fifth of August, it was adorned with the name and rights of an Archconfraternity. This [Sodalitas] was then transferred from the church of St. Andrew to the church of St. Venantius, and from there to St. Andrew in the village of Vallis. Therefore, when, after a few months, the aforementioned Missionary Society acquired, in this city, the church formerly of St. James of the Spanish Nation, located on the Agonali square, which had fallen into disrepair and ruin, restoring it to new splendor; and when, with the authority granted by the Supreme Pontiff on the sixteenth of November in the year 1878, it dedicated it to the Blessed Virgin Mary, Mother of God, under the title of the Sacred Heart of Jesus, and assigned its convents to its Missionaries; the Priest Julius Chevalier, Founder and General Superior of the same Society, humbly implored the Most Holy Lord, our Pope Leo XIII, to grant that the Archsodalitas of the Most Blessed Virgin under the title of the Sacred Heart of Jesus, which is presently located in the church of St. Andrew in Vallis, and which derives its origin from the Archsodalitas of Exsoldunensis, might be transferred, with Apostolic authority, to the church of the Blessed Virgin Mary, Mother of God, under the title of the Sacred Heart of Jesus, on the Agonali square, and entrusted to the care and administration of its Society, with all the rights and privileges granted to that Archsodalitas; however, under the condition that the Archsodalitas itself be entrusted to the care and administration of the Missionaries, subject in all things to the Most Eminent Vicar in the city. Furthermore, so that the memory of the Archsodalitas that existed in the church of St. Andrew in Vallis might not perish, the same Holiness also willed that an image of the Lady of the Most Sacred Heart of Jesus be placed there.

[*Latin ed. p. 620*]

620 The decree pertaining to public worship shall remain in force; to it shall belong the votive offerings presented by the faithful, and in the same

Translated by churchlatin.ai, a product of Boyne Archives

church, the obligations of Masses shall be fulfilled in honor of Our Lady, as has been customary until now; and pious prayers shall be said, which are demanded by the sole devotion and piety of the faithful. Notwithstanding the rule concerning the law inquired into, no exception shall be made, although certain special and individual cases may be worthy of contrary consideration. For this reason, the aforementioned decree was made, and it was ordered to be communicated to those whose interests are involved. Given in Rome, from the Secretariat of the Sacred Congregation for Indulgences and Sacred Relics, on this 26th day of April, 1879.

A. L. Card. OREGLIA

From the office of S. STEPHANO, Prefect.

A. Panici, Secretary.

[*Latin ed. p. 621*]

SUMMARY OF THE ACTS CONTAINED IN THIS VOLUME XI: APOSTOLIC LETTERS. Page. Apostolic Letters of the Most Holy Pope Leo XIII, by which the Episcopal Hierarchy in Scotland is restored. 5. Apostolic Letters, by which the office of supreme moderator of the Living Rosary is entrusted to the Master General of the Order of the Friars Preachers. 50. Letters of the Most Holy Pope Leo XIII to the Most Reverend Cardinal of Monaco la Valletta, Vicar General of Rome. 99. Letters of the Supreme Pontiff, Pope Pius IX, to the Reverend Father Darboy, Archbishop of Paris. . . 210. Letters of the Most Holy Pope Leo XIII to the Most Reverend Cardinal Nina, Secretary of State. 274. Letters of the Most Holy Pope Leo XIII to the Reverend Father Paul Melchers, Archbishop of Cologne. 323. Encyclical Letter of the Most Holy Pope Leo XIII to the Patriarchs, Primates, etc. 372. Apostolic Letters of the Most Holy Pope Leo XIII, by which the Universal Jubilee is proclaimed. 420. Motu proprio concerning the use of the Gothic character, etc. 468. Address of the Most Holy Pope Leo XIII to the Sacred College of Cardinals in the Vatican. 470. Letters of the Most Holy Pope Leo XIII to the Most Reverend Vicar of the City of Rome concerning the administration of schools. 522. Address of the Most Holy Pope Leo XIII to the Sacred College of Cardinals. 583. FROM THE CONSISTORY ACTS. Concerning the secret Consistory held on July 15, 1878. Nominations of Bishops and descriptions of dioceses, including proposed nominations. Nominations of Bishops. 163, 221, 473, 588. FROM THE SACRED CONGREGATION OF THE HOLY ROMAN INQUISITION. Decision on a doubt: whether Baptism ought to be conferred under the condition that heretics, who return to the Catholic Church "from any sect," . . 613. Decision concerning the explanation of transubstantiation in the Sacrament of the Holy Eucharist, made through four propositions. 615.

[*Latin ed. p. 622*]

622 Matters under consideration from the offices of the Eminent Vicar

Translated by churchlatin.ai, a product of Boyne Archives

of Rome. Page: Instructions from the Eminent Vicar for the Parish Priests of Rome. 169 From the Sacred Congregation of Councils. Benefices; it is debated whether a benefice is vacant when the Rector has obtained another benefice and is seeking a residence. 22 Dismissal letters for ordination; when the Bishop refuses, the cleric requests from the Most Holy Father the grace of receiving Holy Orders. 30 Reinstatement or rehabilitation to a parish; it is debated whether a Parish Priest, who has celebrated a civil marriage, is thereby automatically removed from the parish, so that he may be reinstated or at least rehabilitated. 33 Marriages; in this matter, first, the impotence of the man was debated; then, it was inquired whether the marriage had been only valid and not consummated. 54 Absolution, institution, and fruits; a priest, who has obtained a canonry from an usurping government, requests from the Apostolic See the grace of absolution, etc. 72 Rights of the parish; by the judgment of the Most Eminent Cardinals, certain norms are proposed, which should regulate the exercise of the care of souls between the Parish Priest and the chaplains. 76 Competition for a theological professorship; it is debated whether the election made by the Bishop can be declared invalid due to certain supposed irregularities. 82 Dispensation from irregularity; a cleric, who is only afflicted by epilepsy at night, requests a dispensation from irregularity. 91 General Vicar; the Ordinary requests from the Apostolic See the grace of retaining a Canon of the parish as a General Vicar, having been deprived of his doctorate. 94 Dispensation for marriage; it is debated whether the marriage could have been consummated due to the constant resistance of the woman, so that a dispensation may be requested concerning a valid but not consummated marriage. 111 Competition; it is asked whether the report made by the Examiners should be considered bad and foreign to the Apostolic constitutions. 119 Competition; it is debated whether the report of the Examiners can be called bad because, in calculating merits and requirements, they have followed a certain diocesan custom. 128 Marriages; it is inquired whether the impotence, at least relative, can be proven in a man who has lived for six years with a woman, leaving behind certain signs of virginity. 136 Opening of doors and residence; it is asked whether the opening of doors can be granted due to suspicion of trickery and theft, and whether Canons are obliged to establish a residence in the place where the Cathedral Church is built. 179 Concerning the care of the sick; various questions are proposed regarding the care to be provided by the parish priests to the dying. 189

[*Latin ed. p. 623*]

Summa 623, acts, page Sponsalium: The question is debated whether the sentence of the Archdiocesan Court should be confirmed, which declared that no marriage existed.

227 Fontis baptismalis: A new baptismal font was erected with the con-

Translated by churchlatin.ai, a product of Boyne Archives

sent of the Bishop. The Archpriest of the Collegiate Church, which previously had only one font, opposed this and requested the removal of the new font.

232 Iurium Parochialium: It is inquired whether the Collegiate Chapter should be maintained in possession of certain parochial rights, which the Bishop has declared to be abusive, having issued a decree to that effect.

241 Mediae annatae: It was asked whether, in the settlement of the *media annata*, distributions to the choir should be considered as fruits of the benefice, and whether, among the burdens to be deducted, the inheritance tax should be calculated.

249 Circa applicationem secundae Missae: The question is debated whether a priest, a member of a charitable sodality, can apply a second Mass offered for the dead confreres.

284 Decimarum super liquidatione: It is inquired what sum of money should be paid, from what time should the payment begin, and who should bear the costs of the judgment regarding the tithes.

325 Missae pro populo: The question is debated whether the Bishop or the parish priest, who performs the Bishop's duties in a parish that lacks a benefice and a parochial residence, should offer the Mass for the people.

332 Matrimonii: The question is debated whether the sentence of the Diocesan Court, which declared that no marriage existed, contracted by force and fear, should be reformed or confirmed.

340 Funeris et emolumentorum: There is a dispute between the parish priest and the chaplain of the sodality, both called "of mercy," regarding to whom belongs the right of associating corpses with burial, even outside the diocese.

379 Reintegrationis in Paroeciam: It is doubted whether a removable parish priest (commonly serving in France) should be reinstated in the parish to which he sent a notice based on presumed force and fear, or whether he should remain in the parish after another has renounced it.

385 Dispensationis ab irregularitate: A gluttonous man requests a dispensation so that he may be promoted to the orders, having previously requested a dispensation because he is irregular due to this bodily defect.

426 Matrimonii: Due to the impotence of the man, the question is raised whether a dispensation should be requested regarding a marriage that is valid but not consummated.

430 Dispensationis ab irregularitate: A priest, burdened by a weakness of the nerves, requests that he may, by celebrating Mass, be permitted to approach the altar, which he could not cover with priestly garments.

439 Nullitatis renuntiationis et reintegrationis: The question is debated whether the renunciation of a choral benefice, made by a priest who is interdicted with regard to the administration of his goods, is valid.

Translated by churchlatin.ai, a product of Boyne Archives

441 Reintegrationis vectigalium: There is a dispute between the Chapter and the parish priest regarding to whom belong the various taxes imposed by the government on the goods of the parish, which have been entrusted to the Chapter.

450 Absolutionis et dispensationis ab irregularitate: The Bishop requests the authority to promote a cleric to other orders and to enable him to exercise the orders he has already received, who received the diaconate by jumping over the steps, having received it from a foreign Bishop with false dismissal documents.

458

[*Latin ed. p. 624*]

624 Summa actorum, pagina Canonicatus; quaestio agitatur inter patronum nominantem et clericum, qui ius passivum ad canonicatum habere censet. 478 Parochialis; lis est an confirmari vel infirmari debeat sententia Curiae, per quam parochus ab officio suspensus fuit. 484 Commutationis voluntatis; patrona Legati Missarum exposcit a Sancta Sede, ut sibi concedatur posse convertere in opera caritatis tres partes aut dimidium ex redditibus Legati Missarum. . . . . 493 Funerum et Emolumentorum; inter parochum terrae natalis, in qua canonicus mortuus est, disputatur cuicum competat ius tumulandi et funeris. 496 Iuris conferendi canonicatus et cantoratus; Episcopus et Abbas quaerunt a S. Cong. Concilii ut resolvat uter nominandi canonicos et cantores ius possideat. 503 Matrimonii; disceptatur de validitate vinculi ob defectum consensus et domicilii. 545 Distributionum; dubitatur an duobus canonicis absentibus ad evitandas factiosorum minas competat ius ad distributiones percipiendas. 596 Veniae ad matrimonium; exposcitur venia ad matrimonium ineundum ab Apostolica Sede. 601 EX SACRA CONGREGATIONE EPISCOPORUM ET REGULARIUM. Suspensionis et remotionis a Paroecia; quaeritur an removeri possit a Paroecia Parochus, quem ob suam agendi rationem populus odit et Religio damnum capit. 146 Reintegrationis; qua saltem sancitum est alicuius sodalitii confratrem: 1) non posse ad sortitionem sussidiorum dotalium admitti si omnia puncta non sit consecutus, quae peculiares ipsius sodalitii leges constituant, praesertim cum quaestio sit de laedendo ius tertio quaesitum; 2) iure ac merito per sodalitii rectores ex albo confratrem erasari, si facto constet eum talia commisisse, quibus expulsionis poena ipso facto incurrenda ad tramites constitutionum applicari debeat. 197 Iuris ducendi funus et sepulturae; quaesitum est an iure sepultura concessa fuerit cuidam, qui de familia non erat, et an ob eiusmodi concessionem iura parochialia laesa manserint. . . . . 350 Pensionis; disquiritur an pensionarii, iuxta decretum Cum nuperrimis, consequi valeant pensionem a quolibet immunem onere, et an reintegran debeant quoad onera in pensionibus iam passa. 396 Sacrarum functionum; quaeritur an Ordinarius impedire possit

Translated by churchlatin.ai, a product of Boyne Archives

campanarum pulsationem tempore Missae paroecialis, an Sacerdotes saeculares et regulares possint introducere functiones extraordinarias, etc. 603

[*Latin ed. p. 625*]

Summary of acts 625 FROM THE SACRED CONGREGATION FOR THE PROPAGATION OF THE FAITH. Page. Historical notes and reasons by which the Apostolic See restored the Episcopal Hierarchy in Scotland. Instruction concerning public schools addressed to the Most Reverend Bishops in the United States of America. 13 44 FROM THE SACRED APOSTOLIC PENITENTIARY. Authentic declarations concerning the announced Jubilee. 530 FROM THE SACRED CONGREGATION FOR RITES. Concerning the language, or Parisian dialect; concerning the beatification and canonization of the Venerable Servant of God, Father Honoratus of Paris, a professed priest of the Order of Minor Friars of Saint Francis, Capuchin. 97 A doubt concerning the obligations that follow the reduction of holidays in France, completed in the year 1802. 207 Neapolitan; concerning the confirmation of the worship rendered from time immemorial to the Servant of God, Our Lord, the Bishop, now called Saint. 256 Concerning patronage; in which are widely treated questions concerning the invocation of saints and the principal patronage of saints, in each diocese or state. 290 Decree, concerning the use of petroleum. 322 Decree, by which it is ordered that writings concerning the canonization of saints should only be printed by a printer who is properly dependent on the office and authority of the Father Master of the Sacred Palace. 369 Concerning the celebration; it is resolved that the feast of the patron of any church, whether consecrated or simply blessed, should be celebrated with a double class of feast, with an octave concerning the Mass and the Office, by the priests attached to that church. . . . » 370 Decree, concerning the burial to be given on the days of Saint Mark and the Rogations, or on the eve of Pentecost. 419 Decree (related in a note) by which it is indicated that a blessing with an Indulgence should not be given, except for images of the Holy Numismata, which represent the saints described in the Martyrology and canonized. 407 Concerning the beatification and canonization of the Venerable Servant of God, Pompilia Maria Pirotti. 463 Iaciensis; decree concerning the manner of singing the invitatory in the Divine Office. 467 Portus Aloysius; doubts and resolutions concerning the images and apparitions of the Blessed Virgin Mary under the titles of Lourdes, La Salette, and the Immaculate Conception, etc. 512 Concerning the right of consecrating altars and titular churches; the question is asked whether churches and altars of the titles of Cardinals should be consecrated by the Eminent Titular or by the Eminent Vicar of the City of Rome. . . 514 Concerning the recitation of the Confiteor in the choral Office. 528 Acts,

Translated by churchlatin.ai, a product of Boyne Archives

volume XI, page CXXXII 40.

[*Latin ed. p. 626*]

626 Summary of Acts, Dijon. Concerning the beatification and canonization of the Venerable Servant of God, Benigni Joly, Canon of the Church of St. Stephen in the City of Dijon.

529 Decree by which the use of a certain mechanical apparatus, by means of which the Ostensorium is raised and lowered while the salutary Host is being exposed to the people, is disapproved.

581 FROM THE SACRED CONGREGATION FOR INDULGENCES. Decree concerning the addition and accumulation of Indulgences.

154 Decree, by which the unusual custom of enrolling absentees in pious sodalities is rejected.

160 Congregation of the Precious Blood; concerning the faculty of the Vicar Capitular with regard to the erection of confraternities.

355 Fribourg; concerning the interpretation of words within one or two weeks.

361 Decree, by which it is prohibited to buy or sell sacred relics and the remains of saints, both in the city and outside of it.

368 Auren; concerning the station of the Via Crucis (Way of the Cross).

404 Tarantasia; concerning the faculty of imparting the blessing with a plenary indulgence at the point of death.

408 Bergamo; concerning the Indulgence of the Porziuncola with regard to distance.

415 Decree, by which it is granted to the Society, which bears the name "from the adoration, etc.," to transfer the Archiconfraternity attached to it to Rome, and to unite with the Archisodalitas erected in Rome in the buildings near the Four Fountains.

616 Decree by which it is granted that the Archisodalitas of the Blessed Virgin Mary, from the Church of the Sacred Heart of Jesus, from the Church of St. Andrew de Valle, may be transferred to the Church of the Blessed Virgin Mary of Our Lady in the Agonali Forum.

618 FROM THE SACRED CONGREGATION OF THE INDEX. Decree, by which certain books are prohibited.

204, 287, 461 FROM THE SACRED CONGREGATION OF BREVES.

Brief of His Holiness Pope Leo XIII, by which the gradual Roman, already completed, as well as the antiphoner and psalter, which are now being prepared, are approved and declared authentic by the esteemed firm F. Pustet of Ratisbon.

289 Brief, by which an Indulgence of three hundred days is granted to

Translated by churchlatin.ai, a product of Boyne Archives

those who add the "Jesu, Maria, Joseph" to the "Madre di Dio" prayer.

594 APPENDICES.

I. It is debated whether a cleric who has been ordained and who has attempted marriage in a civil manner, both before and after the promulgation of the Apostolic Constitution, incurs excommunication and, if he holds a benefice, loses it by law.

39 Appendix

II. Concerning the doctrine of domicile and quasi-domicile, for the validity of marriage.

573 Appendix.

[*Latin ed. p. 627*]

INDEX GENERALIS CONCLUSIONUM QUAE ADNOTANDAE EXPOSITA IN SUNT, VEL PLERISQUE ACTIS QUARUM MATERIA DECLARATA IN IN HOC VOLUMINE RESPECTIVIS RELATIS ACTIS AMPLE REPERITUR. Eae autem conclusiones sub sequentibus verbis comprehenduntur:

Apertionis oris. Appellatio. Benedictio in articulo mortis. Beneficium. Bullae Pontificiae. Censura. Commutatio voluntatis. Concursus. Consuetudo. Conventiones. Distributiones chorales. Episcopus quoad ius commune. Expensae litis. Fontis baptismalis. Functiones sacrae. Indulgentia Portiunculae. Indulgentiae. Irregularitas. Iurium parochialium. Iuspatronatus. Matrimonium quoad impedimenta. Matrimonium quoad consensum et domicilium. Mediae Annatae. Missa pro populo. Missae secundae applicatio. Obreptio et subreptio. Parochus quoad amovibilitatem. Parochus quoad congruam. Parochus quoad remotionem. Patronus Civitatis. Pensio ecclesiastica. Reintegratio. Renuntiatio beneficii. Resolutiones. Sepultura. Sponsalia. Stationes Viae Crucis. Vicarius Capitularis. Vicarius Generalis.

Apertionis oris. Apertio oris conceditur contra rescriptum Pontificium quoties aliquid necessarium non fuerit expressum, vel quid falsum fuerit allegatum in eius impetratione; idque eo fortius si ius tertii quaesitum sublatum fuerit, p. 187. Ad obtinendum arbitrium aperitionis oris, necesse est, ut aliquae prodeant suspiciones in discrimen revocantes Pontificis voluntatem, ne iniustae atque futiles moveantur lites, ibid. Proinde oris aperitio est deneganda quoties exulent obreptio et subreptio: quia Pontificum decreta semper reverenda sunt, etiam si (ex motu proprio) iuri tertii derogatum fuerit per rescriptum clausula non obstantibus munitum, ibid. Pontificia rescripta veritatis habent praesumptionem pro se, ideoque nonnisi per oris aperitionem, a Papa ipso concessam, licet de Pontificio rescripto quaestionem instituere, pag. 320. Oris aperitio eo tantum in casu adhiberi potest, quo vel falsum narrando vel verum reticendo, ideo obreptio aut

Translated by churchlatin.ai, a product of Boyne Archives

subreptio, rescriptum postulatum fuisse ostendatur, ibid.

Appellatio. Nulla ex iure conceditur facultas appellandi contra decreta Episcoporum; quatenus ipsi sunt executores Sacro Concilio Tridentino, ne executio huius Sacrosancti Synodi suspendatur aut impediatur, pag. 33.

[*Latin ed. p. 628*]

628 General Index. Even Benedict XIV, in his Constitution *Ad militantis Ecclesiae*, granted ecclesiastical tribunals the power to receive appeals from denials by the Sacred Orders or advancements to higher orders, page 33. However, so that no avenue would be entirely closed off to those rejected by the Sacred Orders, it was granted that one could appeal to the Apostolic See and present their grievances, so that it might be determined whether the Bishop had been justified in the cause for such a rejection, ibid. Benediction at the point of death. Moved by charity towards the faithful who are dying, and by reverence for the aforementioned benediction, Benedict XIV desired that no corner of the world should remain where the cause of salvation of the Christian faithful might be endangered due to the lack of this benediction, with its plenary indulgence, offered to those struggling in their final agony, page 414. Therefore, he extended the limits within which the delegation of the power to administer this benediction was restricted, both in terms of time and with regard to the persons to whom it was granted, ibid. He also decreed that such concessions should not expire with the death of the grantor; since the jurisdiction delegated in matters concerning grace, and not justice, should remain even after the death of the delegator, page 415. Furthermore, Bishops can delegate, according to the Constitution *Pia Mater*, to as many secular or regular priests as they prudently judge necessary for the number of souls, without any limitation, ibid. It is not strictly required that such a delegation be made individually and in writing; but since this concerns a matter of great importance, in which the danger of doubt must be entirely absent, it is more prudent if the power to administer the benediction at the point of death is granted in writing and specifically to certain individuals, ibid. When a Bishop delegates a parish priest residing in the countryside, with the power to choose another confessor, to administer this benediction, he is not bound to specify the number of cases in which the delegated parish priest may choose another confessor; for this would be to the detriment of souls, and would be contrary to the spirit of the aforementioned Constitution, ibid. Benefice. By law, the first benefice is vacated upon the acquisition of another benefice that is incompatible with it; while the Council of Trent also disapproves of the plurality of benefices, page 29. However, it is required that the second benefice be possessed fully and peacefully, with effect; that is, with the perception of the fruits, so that the first benefice is legally vacated due to the acquisition of the incompatible second benefice; because the mere granting of the benefice does not cause it to be vacated, but rather the possession of

Translated by churchlatin.ai, a product of Boyne Archives

the benefice is required, page 30. Indeed, the Sacred Canons allow, from the moment of the possession of the second benefice, for the individual, as a precaution, to relinquish the first benefice, and to ascertain whether any difficulties arise, either legally or factually; for if difficulties exist, the first benefice is not considered to have been vacated, so that the individual does not lack either benefice, ibid.

[*Latin ed. p. 629*]

Index generalis 629. Quapropter, nulla est impetratio secundi beneficii infra bimestre facta, etsi vacatio primi postea contigerit, quia beneficium alteri conferri nequit, nisi post secutam vacationem primi beneficii, page 30. Non solum beneficia personalem residentiam exposcentia habentur uti incompatibilia, sed etiam beneficia simplicia dici debent incompatibilia, quorum unum sufficiens sit pro honesta vitae substentatione, ibid. Beneficiatus nedum expresse sed etiam tacite renuntiare potest suo beneficio, ex. gr. aliud acceptando beneficium incompatibile, quo casu antea possessum ipso iure vacare intelligitur, page 38. Beneficium ipso iure pariter vacat si beneficiatus matrimonium contrahat, ob incompatibilitatem status coniugalis et clericalis. Hoc tamen intelligendum de beneficialis qui nondum SS. Ordines susceperunt, ibid. Sacerdotes vel clerici in Sacris Ordinibus constituti matrimonium attentantes nulliter contrahunt, turpemque inchoant concubinatum, atque ob huiusmodi culpam possunt, servatis canonicis formis, removeri a beneficio, ibid. Bullae Pontificiae. Bullae pontificiae ut authenticae dici possint quatuor praesertim notas ab extrinseco praeferre debent: nempe 1° Ut charta pergamena sint conscriptae; 2° ut charactere exantlatae sint theutonico; 3° ut plumbeo sigillo; filo rubro et croceo a pergamena pendente munitae reperiantur; 4° ut subscriptionem habeant tum Cardinalis Pro-Datarii, tum aliorum Datariae officialium, qui ad hoc sunt deputati, page 511. Ab extrinseco vero suspectus ingeritur eas esse apocriphas, si concessio adeo late pateat, ut limites a S. Sede apponi solitos undequaque excedat, ibid. Censura. In iudicialibus sententiis trinae requiruntur monitiones, aut saltem una, quae loco trium stet, quatenus censura pro crimine irroganda sit; nulla vero requiritur monitio, quum simplex censura medicinalis alicui infligitur, non ad ulciscendum crimen, sed ad contumacis emendationem, page 154. Commutatio voluntatis. Defunctorum voluntates sancte servandas esse utrumque ius clamat; hinc ecclesiastica potestas, etiam remediis a iure concessis, semper ad earum executionem accurate invigilat, page 496. Proinde nec Supremus Pontifex solet conditionibus adiectis in fundatione, utendo sua potestate suprema, contraire, nisi legitime adsint ac necessariae causae, praesertim si agatur de iure tertii, ibid. Charta pergamena haud abolita fuit in Bullis pontificiis; ideo corrigenda est nota 1, page 511; sed sublatus fuit usus characteris theutonici, et usus numismatis plumbei limitatus fuit ad beneficia maiora et a d acta S.

Translated by churchlatin.ai, a product of Boyne Archives

Sedis solemniora.

[*Latin ed. p. 630*]

630 General Index. Therefore, other legal remedies must be exhausted before the rights of a third party are destroyed and the wills of the founders are violated; and the Pontiff does not usually do this without a benefit that is equivalent to necessity, page 496. Competition. Customs or statutes of the Diocese which accidentally modify the form of a competition but do not affect its substance, may be maintained and do not cause nullity, page 91. The time allowed for inscription in a competition expires at midnight on the last day assigned; indeed, there are those who teach that, even a few moments before the competition begins, candidates may be admitted for the benefit of the Church, provided that the matter is sound, ibid. The Bishop may choose the one whom he judges to be more suitable in the Lord, even though the other candidates may be more learned and possess better qualifications, ibid. When the election is referred to the Holy See, this is not obliged to repeat the competition, but may choose as it pleases, although this power is rarely used, ibid. In the granting of benefices through competition, even if one of the candidates appeals, the Bishop is not obliged to suspend the granting of the benefice, but may grant it provisionally to the one whom he judges to be more worthy, page 134. According to the Council of Trent, Session 24, chapter 18, on reform, and according to the aforementioned Constitution of Benedict XIV, the Examiners must consider both the doctrine and the other qualities or qualifications of the candidates, and, taking all things into consideration, must give their judgment on their suitability or unsuitability, ibid. This combined and cumulative judgment pertains to the essential form of the competition, so that a disregard of this form causes the nullity of the competition, ibid. The custom of not examining the qualities and qualifications of the candidates is not maintained unless they have first presented proof of their knowledge and doctrine, ibid. If there is equal knowledge among the candidates, or if there is only a slight difference, he is to be preferred who excels in honesty and gravity of character, and he is to be considered unworthy who would be a cause of scandal to the people, page 135. Upon appeal, the original documents of the competition, closed and signed, or an authentic copy, collated and heard by the Chancellor of the competition and another notary before a Vicar or other person constituted in ecclesiastical dignity, whom the Ordinary chooses, must be transmitted to the tribunal from which the appeal is made, and must also be signed by the Examiners who were present at the competition, ibid. According to the Instruction of the Sacred Congregation, each answer and every word, when presented by each of the candidates, must be signed not only by the one who wrote it, and by the Chancellor of the competition, but also by the Examiners and by the Ordinary or his

Translated by churchlatin.ai, a product of Boyne Archives

Vicar, who were present at the competition, ibid.

[*Latin ed. p. 631*]

Index generalis 631. According to Reclusius, concerning Concursuses, page 2, question 1, title 2, concerning the devolved collation, all these things were introduced as the substantial form, so that a concursus cannot be maintained if these are omitted, page 135. Custom. A custom of a very long time, or one that is unmemorable, carries the force of written law, as if it were a better title in the world, and it precedes the presumption of pontifical indulgence, so that it must be proven: and because the unmemorable holds a place of proof, page 188. An unmemorable custom seems, in a certain way, to exert its force even in Trent, if it is not alleged as a pure benefit of time or prescription, but insofar as it is brought forward as presumptive proof of some apostolic concession: because then the decree of Trent, which would annul it, is not struck directly, but rather it seems that the matter concerns its non-comprehension, ibid. Agreements. Agreements initiated only by words are to be observed in ecclesiastical law, page 331. An agreement initiated by words is not to be revoked, if it took place in the presence of the Ordinary, who had been delegated to care for the settlement, with the Ordinary himself present, ibid. All the more, the parties are bound by such an agreement if it can be shown that the agreement was just and equitable, ibid. In order that the force and efficacy of agreements may be more fully attained, the final cause of those same agreements should not be disdained; which, as jurisprudence teaches, often serves to shed light on each contract, page 457. Agreements conceived in the most extensive and unrestrained terms, by the very disposition of the law, are to be understood in such a way that they are not limited by any boundary; because general words are to be understood generally: and that which is expressed generally, concerning species and individuals, must be understood, ibid. From the law in Digest 6, concerning contracts of purchase, it is deduced that something is to be held as valid, not only if it has been expressly stipulated, but also that which clearly and necessarily follows from what has been expressly stipulated, ibid. Choral distributions. Choral distributions are due only to those who are present at the celebration of the divine offices; therefore, they are not due to a cleric with respect to his title, nor as a canon, but as one serving the divine offices, page 599. Therefore, Trent, Session 24, chapter 12, in restoring the decree of Boniface VIII, commanded: "Those who have attended at the appointed hours shall receive distributions; the rest, without any collusion or remission, shall be deprived of them," page 600. It is not permitted to the Chapter, under any pretext, to give, relinquish, or remit to anyone, by any collusion, daily distributions to one who has been absent from the service of the Church, or who, in any other way,

Translated by churchlatin.ai, a product of Boyne Archives

should legitimately lose the distributions, ibid.

[*Latin ed. p. 632*]

632 General Index. Nevertheless, just as the most loving Mother Church, with charity and piety, attends to those afflicted by illness, granting them distributions as if they were present in the choir, so she acts towards those who, due to a legitimate physical impediment, are unable to attend divine services, page 600. Therefore, a Canon, unjustly exiled from his home or residence due to a just fear of enemies, is not deprived of distributions, since natural law dictates that no one should be punished without guilt, ibid. The spirit of such ecclesiastical discipline is that those who are negligent or who disdain to reside [in their parish] are excluded from distributions, but not those who are impotent, either through illness or through involuntary absence, ibid. The Bishop, concerning common law. It has never been permitted to Bishops to insert anything into their Synodal Constitutions that would derogate from common law, even if it is considered necessary to eradicate corruption and to protect the sacred rites and the religion, page 231. Expenses of litigation. Generally, in causes before the Sacred Congregations, and particularly before the Sacred Congregation of the Council, provision is made for the reimbursement of expenses, unless in cases expressly stipulated by law, page 332. Baptismal Font. In the early times of the Church, baptismal fonts existed only in cathedral churches, and only Bishops administered baptism to the faithful who came to the cathedral church, page 240. With the passage of time, as the number of Christians increased, baptisteries were erected also in other churches, especially in towns, and the pastors of these churches were granted the faculty of administering baptism, ibid. Such churches were most often called "mother churches," either proper, insofar as other parishes were formed from their territory, which are called "daughter parishes," or improper, whenever other churches were dependent on or auxiliary to a single parish, ibid. There are also simply baptismal churches, which possess a baptismal font, and, even with regard to parish churches, have the right to administer baptism, page 241. Therefore, the general principle that every parish church has the right to erect a baptistery is subject to a limitation, namely, that churches or mother churches, or baptismal churches, which already possess a font, are not to be considered. ibid. Sacred functions. Ordinaries are to take care of all matters in the diocese that pertain to the worship of God, and to provide for these, where necessary, observing, with regard to secular churches, the resolutions of the Holy Congregations; and especially the decree of the City and the World, in the year 1703, of the Holy Congregation of Rites, by which many...

[*Latin ed. p. 633*]

General index, 633 questions which could arise in secular churches, page

Translated by churchlatin.ai, a product of Boyne Archives

612. Bishops, with regard to secular churches, can order, either in a Synod or outside of a Synod, that Masses not be celebrated in public oratories before the parish Mass, so that the people are not drawn away from the parish Mass and the sermon usually given by the parish priest therein; and obedience to the Bishop's command is required, according to declarations of the same Holy Council, ibid. However, Bishops cannot prohibit, except on Holy Saturday, that Regular clergy ring the bells in their own churches, before or during the parish Mass, since Saint Pius V, by the Constitution *Etsi mendicantium*, forbade Ordinaries to prevent these brothers from ringing the bells, whenever they wish, either on Sundays or feast days, or on other days of the year, and even at the time when they themselves are celebrating, ibid. The Ordinaries of places cannot order their subjects to abstain from the Parish Mass, because it cannot be undone that a contrary custom of attending the sacred mysteries in any public church, which, when it prevails throughout the world, has already taken on the nature of common law, ibid. However, Regular Orders can perform any functions without the permission of the Bishop, in their own churches, provided that the resolutions of the Holy Congregations are observed and, except for processions outside the confines of the church; with the exception of Sundays, regarding special privileges concerning processions of the Body of Christ and the Most Holy Rosary, page 613. Bishops have the power, even by virtue of the decree of the Council of Trent, Session 22, to order exempt Regular clergy, under pain of suspension, not to allow any external priest to celebrate in their own churches, without prior permission from the Bishop, ibid. Indulgence of the Porziuncola. All churches, which are already endowed with this privilege at the time of this resolution, can enjoy the same until it expires; even if they are located in the same city and parish, and are not more than one Roman mile apart; provided that there is no church actually belonging to the Franciscan Fathers, page 419. The Indulgence called the Indulgence of the Porziuncula, was considered by the Holy Congregation of Indulgences to be so significant, that in future grants of the same Indulgence, a clause regarding the distance to be observed will also be included, with regard to all churches endowed with this privilege, which do not belong to the Franciscans, ibid. Indulgences. It is the heartfelt desire of the Apostolic See that the prescriptions of the Council of Trent regarding sacred Indulgences be fulfilled: so that the discipline of the Church is not weakened by excessive ease in granting them, page 159. Therefore (unless new conditions to be fulfilled are prescribed), it is not permitted that other Indulgences be added to the same matter or act of piety, to which Indulgences have already been attached by pontifical or episcopal grant, or to other Indulgences already granted, by the same Bishop or by different

Translated by churchlatin.ai, a product of Boyne Archives

Ordinaries and Prelates, ibid.

[*Latin ed. p. 634*]

634 The general index states that Bishops cannot grant Indulgences except within their own Dioceses (within, however, the limits of jurisdiction), and that, as already established by the Council of Trent, Indulgences cannot be granted by anyone other than Bishops or the Ordinary of the place, page 159. Therefore, even a Bishop who is a coadjutor to another Ordinary cannot grant Indulgences of forty days, because he is not the Ordinary of that place, page 160. It is a most serious duty incumbent upon the Ordinaries of places to diligently examine matters concerning Indulgences within their own jurisdiction, so that those which are found to be of doubtful faith may be recorded in relation to the status of their Diocese, lest the faithful people be deceived, ibid. An unusual custom of admitting even those who are entirely absent to pious Sodalities was entirely rejected by the Holy Father; therefore, unless they are present, they cannot properly enjoy the Indulgences and privileges granted to those same Sodalities by pontifical decree, page 162. However, the Holy Father, out of kindness, has validated all admissions made in the past, while abolishing the custom, thereby reinstating the decree of the Sacred Congregation of Indulgences; so that, by grace, even those who were previously admitted, may now enjoy the graces and privileges with which the Sodality is endowed, ibid. Therefore, from the publication of this decree, it is useless to enroll any absent person among the members of a pious Sodality; for such a person would not be able to be enriched by the privileges, graces, or spiritual benefits of that same Sodality, page 163. In matters concerning Indulgences, one must adhere to the proper and literal meaning of the words, so that the words "every week" mean nothing other than "within seven days," page 367. Grave theologians agree that, with regard to the matter of Indulgences, "week" should be understood as a unit of time to be measured. Ibid. Therefore, if confession "every week" is prescribed for obtaining a particular Indulgence, the faithful are obligated to make confession at intervals of no more than seven days, ibid. Likewise, whenever it is prescribed that confession be made within two weeks for the purpose of obtaining Indulgences, two confessions in a month are not sufficient, but it is required that the faithful make confession at intervals of no more than fourteen days, page 368. All the faithful who are accustomed to confess at least once a week can obtain all Indulgences that occur to them and for which actual confession is required, ibid. Irregularity. All canonists agree that it is the duty of the Bishop's judgment to determine, in a particular case, what constitutes a notable or minor defect, and whether, in this case and at this time, there is to be feared a danger or scandal through the execution of the Order, page 429. According to modern Church discipline, a bodily defect does not constitute an irregularity with regard to the reception of the Orders, unless

Translated by churchlatin.ai, a product of Boyne Archives

it is such that it either prevents the proper performance of the essential actions of the Order, or is liable to cause public scandal to the faithful.

[*Latin ed. p. 635*]

I. General Index 635, may impede the execution [of a duty], or may carry with it such a deformity that it does not allow the performance of functions without danger or offense to the people, page 429. Many canonists believe that those who are physically deformed should not be appointed; especially if the deformity exposes the sacred things to the danger of irreverence, page 430. Rights of the Parish. These can be found in the Chapters of Cathedrals and Collegiate Churches, concerning the care of souls, which is divided by canonists into habitual and actual care; but so that in each individual case there is habitual care, while in one person there is actual care for its exercise, page 248. It does not seem to infringe upon the rights of the Chapter, to which the care of souls belongs, if it reserves some of the parochial rights from the beginning, while appointing one to exercise the actual care, ibid. Therefore, in the functions and rights that it reserves for itself, the Chapter must be considered as the proper Parish Priest; so that each prebendary may properly exercise the care of souls with regard to those functions and parochial rights reserved to them, ibid. The existence of habitual care with the Chapter is demonstrated by the institution of a perpetual vicariate; especially if suitable provisions are made for the Vicar from the revenues of the Chapter, ibid. The association [of a body] up to the place of burial is counted among the parochial rights; therefore, it should regularly be performed by the proper Parish Priest, in whose parish someone has died, and in which he received the sacraments, page 355. All acts of jurisdiction, which are performed either in the house of the deceased, or on the road, or within the parochial church, belong to the Parish Priest, according to the sanction of the Holy Canons and numerous resolutions of the Holy Congregation of Rites, page 384. Therefore, the right of associating [a body] with the Church and burial (even outside the Diocese) belongs to the proper Parish Priest; and he is considered the proper one in whose parish someone has died, even if he has stayed there for a short time or superficially, ibid. Funeral fees are due to the Parish Priests, not because of the work done on the human bodies, but because the Parish Priest instructs the people through preaching, celebrates divine services, administers the sacraments day and night, and offers prayers for the people, ibid. It cannot be said that the Parish Priest has tacitly relinquished his parochial rights, if, for some moral reason, he has sometimes had to act in such a way that these rights were violated by another; for those things which are received out of necessity, should not be brought into argument, Paul, I, 162 on the rules of law, ibid. By reason of the spiritual office, namely, by providing spiritual things to the parishioners, the Parish Priests have the assistance of jurisdiction in the funerals of the deceased within the limits of the parish,

Translated by churchlatin.ai, a product of Boyne Archives

but not by reason of an accidental death in the same parish, even with the administration of the sacraments at the end of life, page 501.

[*Latin ed. p. 636*]

636 Index generalis. Therefore, the burial is due to the parish priest proper (who becomes such through residence) of the deceased person; for it is fitting that, after death, one should receive burial from him, from whom, while living, we receive the sacraments, page 502. The sacred canons, with regard to burial, do not consider the place where one expires, but where, while alive, one was accustomed to be nourished by heavenly food, ibid. Canon regulars, since they are incorporated into the chapter of the church, and are members thereof, and remain parishioners of the same church wherever they reside, are to be buried in the chapter church; just as religious, who are of the family of the monastery, are to be buried near the church of the monastery, ibid. For in the chapter church, the canon regulars perform divine and sacred rites, and are refreshed spiritually; therefore, in the same church, they have burial, wherever they have their residence, or wherever they depart from this mortal life, ibid. Patronage. By canonical law, under the names of family and house, inheritances do not descend through women; because those who descend through women bear the name of the father, not of the mother, and because a house signifies the vow of agnition, and implies the exclusion of descendants through women, page 483. Therefore, the familial right of patronage, especially when accompanied by the addition of a surname, does not belong to those who descend through a woman, whether it is a question of active or passive patronage, ibid. A presumptive call to the male sex through a woman is not upheld, where women are clearly excluded by testators, or where there are presumptions that demonstrate the vow of agnition, ibid. It is certainly held by learned doctors that a call compelled to a certain family, with the addition of a surname, does not extend to agnates; those alone who use the same surname constitute the same family, page 484. From the canonists, it is gathered that passive patronage can receive interpretation from active patronage, whenever the testator, or the law, has stated something doubtful, or something similar in both areas of law; then, one designation requires the aid of the other, ibid. Marriage, with regard to impediments. In order to properly carry out matrimonial proceedings, not only the Constitution *Dei Miseratione* and the Instruction of the Sacred Congregation of the year 1840 must be observed, but also other matters that concern the intrinsic form of the judgment and the formalities required for the validity of the sentence, page 70. With regard to the intrinsic form of the judgment, it is first required that the judge be competent, or that he be endowed with certain jurisdiction; with regard to the external formalities of the law, it is required that the final sentence be pronounced by the judge publicly, not in a secret place,

Translated by churchlatin.ai, a product of Boyne Archives

with both parties legitimately summoned and present, not on the day to which the summons was made, page 71. If all of these, both intrinsic and extrinsic, are lacking, there is indeed a sentence, but it is not a sentence; from which it is not proper to appeal, and which can bring no prejudice, ibid.

[*Latin ed. p. 637*]

Index generalis 637. It may indeed be doubted whether a judge can be delegated by the Vicar Capitular to hear matrimonial causes, since, according to the opinion of some Doctors, the authority passes to the Vicar Capitular, exercising a bare jurisdiction, while the jurisdiction itself remains with the Chapter, page 71. And in truth, the Council of Trent, in their opinion, did not take away, nor alter, nor diminish the jurisdiction devolved upon the Vicar Capitular; but only prescribed the manner in which that jurisdiction should be used, or exercised through a Vicar chosen by them, ibid. Marriage remains valid, and it cannot be said to have been consummated, even though the hymen has been broken, unless there is a mingling of seed, which, if present, even in a small quantity, makes the marriage consummated, ibid. Greater proofs are required to declare a marriage null by the way of justice, than to obtain the grace of a dispensation; therefore, it is more difficult to prove the impediment of impotence, in order to renounce a marriage by justice, than to prove the lack of consummation of the marriage, in order to obtain a dispensation, ibid. The lack of consummation of marriage is demonstrated by the oath of both spouses, and by the testimony of witnesses; these, however, are usually employed in a demonstrative, rather than a strictly formal, manner; so that if one or the other is omitted, the process proceeds towards a dispensation, provided that there is a moral certainty of the lack of consummation, ibid. The danger of apostasy and incontinence on the part of one or both spouses, and the incompatibility of the minds without hope of reconciliation, present a valid reason for granting a dispensation from a valid but unconsummated marriage, page 118. The Apostolic See sometimes remits the visitation and physical examination in the canonical process, if a moral certainty of the lack of consummation arises from elsewhere; for example, when both spouses jointly deny consummation, together with the oath of the seventh degree of consanguinity, and with other concurring testimonies, arguments, and supplementary proofs, ibid. Moral certainty is sufficient to exclude the consummation of marriage; and it is not necessary to strictly adhere to the form of proof prescribed by law, but a demonstrative proof is sufficient; so that the process may proceed even if something is omitted, provided that there is a moral certainty of the lack of consummation, ibid. Indeed, that moral certainty is required which would make a prudent man, considering the circumstances, certain of the lack of consummation; and to this end, even the confession of the spouses, confirmed by an oath of the

Translated by churchlatin.ai, a product of Boyne Archives

seventh degree of consanguinity, is sufficient, page 119. No one can doubt that the Supreme Pontiff has the ordinary power to grant a dispensation from a valid but unconsummated marriage, whenever there is a just and reasonable cause suggesting a dispensation; because the supreme law in granting dispensations is always considered to be, and is, the salvation of souls, ibid. The Apostolic See, by the fullness of its power, sometimes remits certain things in the canonical process, which, however, do not affect the substance of the matter, but only the external form; so that the truth may be safely investigated and discovered, page 145.

[*Latin ed. p. 638*]

638 General Index. Indeed, all caution and diligence must be employed so that the truth may be ascertained, and fraud and error may be banished, as far as human frailty allows, when dealing with the dissolution of marriage, which before God is a great sacrament, page 145. It is not fitting to seek the dissolution of a marriage that has been valid for many years; for it is established by inspection of the woman's virginity, that the wife always has the right to claim and allege the husband's impotence, ibid. It is certain that impotence, once proven, dissolves the marriage, if it existed prior to the marriage; if it is relative, it dissolves the marriage with respect to that or those persons, with respect to whom the impotence exists; but if it is absolute and existed before the marriage, it dissolves the marriage with respect to all, ibid. Among the causes of impotence, atrophy, or the consumption of some part of the human body, and aridity are enumerated; by which the body, or some part of the body, no longer receives nourishment, and is thus afflicted by disease, ibid. By the very law, there is no marriage begun by force and fear; because if it were not inherently invalid, it could not be more easily annulled by a judge, since it establishes a perpetual bond by divine law, page 348. However, not every fear is sufficient to dissolve a marriage; but it must be such as to fall upon a steadfast man, and by which the consent is entirely removed from the act of contracting, page 349. No marriage contracted with hidden force and fear, according to the Tridentine ceremonies, can be validated, unless the fear is removed and the spouses give their consent again; otherwise, it must be contracted anew with the same ceremonies, ibid. The reason for this lies in the fact that no marriage with a hidden impediment is considered valid in the eyes of the Church; therefore, to validate it, the presence of the parish priest and witnesses is not required, which was prescribed by the Council of Trent only to avoid grave sins arising from clandestine marriages, ibid. Force and fear are contrary to the laws of nature, which require that each person act freely, so that a firm obligation may arise; and the blessed Thomas takes away the power of parents to obligate their daughter to marry a particular person, ibid. When a person is in a state of freedom, they cannot be compelled by their parents by force to enter into a marriage that is a kind of perpetual

Translated by churchlatin.ai, a product of Boyne Archives

servitude; but according to the rule of law, it is not believed that someone wills what they do when they obey the command of their father or master, page 350. A marriage vitiated by a defect must be dissolved whenever it is legally proven that the impotence existed prior to the celebration of the same marriage, page 438. For although the carnal act of copulation is not of the essence of marriage, the power to do so pertains to the essence of marriage, because through marriage, each spouse is given the power over the body of the other, with respect to carnal copulation, ibid. It is not sufficient to prove the husband's impotence by merely invading the chastity of his wife, because for the value of marriage, or for the fact that a man and a woman become one flesh in carnal copulation, the commingling of seed is required, ibid.

[*Latin ed. p. 639*]

General Index 639. Nothing suffices to constitute an impediment, which manifestly cannot be overcome by the impotence of a man, whether due to a genital abnormality: because often such impotence arises from a condition which externally appears perfectly healthy, page 438. In cases where there is doubt as to whether the impotence existed before or after the marriage, it is rightly considered by the Doctors to have existed before the marriage, if it arises from a natural cause, because natural conditions are always presumed to exist, ibid. Marriage, concerning consent and domicile. In a place where the Council of Trent had not yet been promulgated, the doctrine transmitted by the Most Holy Pope Pius IX in his allocution of September 27, 1852, holds, namely that marriage cannot be conferred among the faithful unless it is at the same time a sacrament, page 572. But, since this law contains a presumption which arises from the fact, if the fact removes the presumption, the law cannot apply, because the act of the agent cannot go beyond his intention, ibid. Marriage is not considered invalid due to a lack of consent, if the contracting parties intended to separate the contract from the sacrament, that is, to enter into a civil contract without intending to receive the Sacrament, ibid. This happens if the contracting parties did not intend to fulfill what the Church requires, and to enter into a contract only civilly, and not with a religious bond, ibid. Again, marriage is considered invalid if a condition has been added to the marriage agreement that it should be dissolved at some time. But care must be taken that only a condition contrary to the essence of marriage is admitted, in which the act of the will is involved, ibid. Marriages contracted in a place where the decree Tametsi had not yet been promulgated are valid, provided that the parties have established their domicile or quasi-domicile in that place, ibid. It is necessary to carefully distinguish domicile from quasi-domicile. Domicile is held to be in a place where a person has established the center of his affairs and fortune; it is sufficient to have a residence with the intention of remaining there for a long time, or for a major part of the year, ibid.

Translated by churchlatin.ai, a product of Boyne Archives

According to the Constitution Paucis of Benedict XIV, for the validity of marriage, at least one month of residence is required before the marriage, which would induce the presumption of quasi-domicile, in order that nothing may be known about the intentions of the parties, ibid. The opinion that continuous and uninterrupted residence is required to acquire quasi-domicile seems more probable, page 573. A very serious argument against the existence of quasi-domicile is the fact of a sudden departure from the place where the marriage was celebrated, ibid. Vagrants are considered to be only those who have neither a true nor a quasi-domicile anywhere; pilgrims are those who are traveling and stay here and there along the way, ibid.

[*Latin ed. p. 640*]

640 General Index of the Half-Yearly Collection. The half-yearly collection, instituted by Benedict XIII, was established for the purpose that the houses of God, whose adornment it is most important to cherish, should not, through the ravages of time, collapse, deteriorate, or be maintained in a less decent manner, page 255. Thus, that Pontiff desired to provide for the adornment of churches, so that no benefice, except for parish churches, should be exempted from contributing to the fruits of the first half-year, provided that, together with uncertain revenues, the annual income did not exceed 100 Roman scudi, ibid. This half-yearly collection was ordered to be paid so purely and simply, that no deduction should be permitted to its detriment, for the sake of daily distributions; but these distributions should also be made, either separately from, or joined with, this collection, ibid. Nor is it permissible to deduct personal expenses, or those which directly pertain to the person, from the half-yearly collection; but only fixed and real expenses, which pertain to the benefice, may be deducted, page 256. Mass for the People. It is incumbent upon all pastors to whom the care of souls has been entrusted, by divine command, to know their own flock, to feed them with the preaching of the divine word and the administration of the sacraments, and to offer the sacrifice of the Mass for them, page 339. In the name of pastors who are obligated to offer the Mass for the people, all parish priests are included, who actually exercise the care of souls: whether they are perpetual or temporary, and removable at will, or secular, or regular, ibid. And no one who has the care of souls is exempt from the obligation of offering the Mass, although it may be supported by a contrary and unmemorable custom, or by revenues that are inadequate and insufficient, and because parish priests are not burdened with this obligation by reason of their office, ibid. By divine law, the entire office of feeding the flock and offering the Mass for it belongs to the Bishops; but by ecclesiastical law, a part of this office is entrusted to the parish priests; from this commission it follows that the parish priest becomes the proper pastor of the flock entrusted to him, and is immediately bound by the

Translated by churchlatin.ai, a product of Boyne Archives

obligation to offer the sacred Mass for the people assigned to him, page 340. The Second Offering for Mass. The constant prohibition against receiving alms for the second Mass is based on this principle: that all avarice and all suspicion of even the slightest bargaining should be kept away from sacred things, page 286. The principal intention of the one who makes the offering (which should always be considered when applying the law) is that the strengthening of ecclesiastical discipline should be considered more important than the benefit of the clergy, ibid.

[*Latin ed. p. 641*]

Index generalis 641: Acquisition and Subreptio. Acquisition and subreptio must be demonstrated by the actor, since it suffices to render the proof in some way doubtful in order to exclude them, page 320. The actor contending for acquisition and subreptio must prove a substantial cause and a violation of his own right; and this is especially required if the grace has already been committed to execution, ibid. It is useless to seek acquisition and subreptio outside of prayers, because the intention of deceiving must be shown in him who obtained the grace; and the rescript expressly or tacitly contains a clause if the prayers are contrary to truth, ibid. Nor does reticence regarding matters of law benefit subreptio, since only those things that legally impede must be stated, ibid. Parochial Vicars regarding removability. Parochial vicars, approved indirectly by the Holy See in Gallia at the discretion of the Bishops, were mandated by the Most Holy Pope Gregory XVI, *fide rebus*, that no innovation be made in the administration of dependent parishes, until otherwise determined by the Holy See itself, page 395. Such parochial vicars can be equated with possessors of manual benefices, or even with removable vicars at the will of the Bishop, who has them under his authority; the care of souls, ibid. Therefore, as a general rule, it can be stated that, just as Bishops freely grant these parishes, they can also freely and without any cause remove or transfer the rectors, ibid. However, this rule is subject to a limitation, namely, as long as the removal is not made: 1) out of hatred; 2) with infamy or notable damage to the priest who is removed or transferred; 3) with damage to a third party. However, these limitations have little place if serious causes are present, page 396. Therefore, in practice, it is hardly conceivable that a case of removal without cause can be devised, so that it can be said of these parishes, as is said of manual benefices; namely, that although they are theoretically removable at the will of the Ordinary, nevertheless some cause, at least a slight one, is always necessary for the removal to be legitimate, ibid. Parochial Vicars regarding suitable means. Parochial vicars ought to use suitable means, by which they can live comfortably; so that, while ministering spiritually to the people in the Lord's vineyard, they are not forced to neglect their duties or to do such things that may cause offense to the people entrusted to them, page 457. Parochial Vicars regarding removal. All parochial vicars who are

Translated by churchlatin.ai, a product of Boyne Archives

not suitable for the sacred offices can be removed or suspended from their parochial office; that is, all who are inhálete, volume XI, title CXXXII, 41.

[*Latin ed. p. 642*]

642 The grounds for dismissing a priest are those that pertain to the duties and obligations of the benefice he holds, page 153. And therefore, not only those lacking in speculative knowledge are to be removed, but also those lacking in practical skills; for they do not know how to fulfill the obligations attached to their dignity, status, and office, and thus the spiritual good of the people suffers, ibid. After the Council of Trent, Session 21, chapter 6, Bishops, even acting as delegates of the Apostles, can remove unfit individuals from a parish whenever the needs of the Church require it, ibid. It is clearly necessary for the good of the people and the needs of the Church that pastors who cause scandal to the people be removed; so that their words may bear fruit no longer, and the people may not despise divine things, ibid. For, since the spiritual good of the people must be considered above all else, and the benefit of the many must be preferred to the benefit of one, there is no doubt that a pastor who causes scandal and is hated by the people can be removed, lest his "temporal" concerns outweigh their eternal salvation, page 154. The Bishop should be motivated by charity, not by hatred, when investigating and punishing offenses, even if the public outcry indicates that the pastor is so misguided that he can no longer conceal his faults without causing scandal, or that he can no longer be tolerated without danger, page 491. Therefore, in cases of serious misconduct, even if the priest is not to be degraded from his order, a pastor who acts shamefully must nevertheless be removed from his administration, according to the evangelical teaching, which states that a steward should be removed from his stewardship if he does not render a proper account of it, page 492. However, in investigating and punishing, it must be ensured that, according to the established procedure, a formal judgment is also issued; therefore, a pastor who has been canonically instituted should never be removed without following the proper canonical procedure, ibid. Therefore, in order for a Bishop to remove a pastor from a parish who is persisting in improper conduct, it is necessary only that, after following the proper canonical procedure, the crime is clearly proven, ibid. Both are required: the proper canonical procedure and the conclusive proof of the crime; and since the penalty of deprivation is the most severe, and is equivalent to civil death, it cannot be imposed lightly, ibid. These precautions clearly indicate that Bishops can deprive scandalous pastors of their benefices, as stated in the Council of Trent, Session 21, chapter 6, concerning reforms: "after they have been warned, they should be restrained and punished, and if they still persist in their wickedness, they should have the power to deprive them of their benefices..." ibid. The graduated penalty, of which the Council of Trent speaks, applies only to other benefices that are not held in conjunction

Translated by churchlatin.ai, a product of Boyne Archives

with the parish. For with regard to pastors, the same Holy Synod clearly stated that this is how it should be done: that if, after being warned and punished, they do not abandon their improper conduct, they should be deprived of their parish benefice, ibid. Patron of the City. According to the decree of Urban VIII of March 23, 1630, concerning the patron of a city, the election should be made by secret ballot by the people, with the advice of the senate.

[*Latin ed. p. 643*]

Index generalis 643 of that City or Place, and not merely by officials; and the consent of the Bishop and clergy of that place must be obtained for the election. page 320. However, this arrangement applies to elections to be held in the future, and not to those already existing; and the ancient patrons, venerated before this decree, are to be maintained, ibid. That patron is to be venerated who, whether by perpetual use and tradition received from ancestors, or by a legitimate election, is regarded as a special intercessor before God, and a particular advocate, by the entire clergy and people of that place. page 321. The Patron of the Place and the Titular of the Church differ greatly. For the former refers only to one church, while the latter encompasses several churches, ibid. The term "place" is understood to mean a multitude of clergy or people, or rather, many clergy and people, ibid. Nevertheless, the Titular of the Church is also the patron of the place, if the church excels in its foundation and has a quasi-episcopal jurisdiction over all other churches in the same place, ibid. The name of the Titular of the Mother Church is more frequently given to citizens, with images of him displayed in shrines along the roads, the size and ornamentation of the temple itself, the preservation of relics, the continuation of worship, the exemption of schools from work on that day, and the solemnity of the feast, all demonstrate the same principal patron, ibid. It is considered essential in such matters to recite the proper office with the octave for both secular and regular clergy, which is usually granted only to the patron of the place or city, although regular clergy are not required to observe the octave, ibid. There must be only one principal patron in one place or city, although there may be other patrons in the same place or city who are less principal, ibid. Among several patrons, the principal one is he who excels in antiquity and hierarchical order, ibid. The principal patron is followed by a feast day of precept, with the obligation to attend the Holy Mass and abstain from servile work, ibid. Ecclesiastical pension. The decree must also be applied in Rome, both because where the same legal principle applies, the same arrangement should be followed, and because the law exclusively applies to all revenues of benefices existing in Italy, and according to which law, all disputes regarding pensions must be settled, page 403. All ecclesiastical pensions, imposed by the Holy Father on prebends and other benefices, are, by their very nature, exempt from any charge, since it is the nature of

Translated by churchlatin.ai, a product of Boyne Archives

a pension to be without charge, ibid. The reason for this exemption lies in the fact that the pensioner does not possess the benefice, but only has a personal right against the possessor of the benefice, to receive from him a portion of the fruits, established by the Holy See, ibid. For since charges also pertain to the possessor and must be fully paid, it has always been necessary to expressly state by law when...

[*Latin ed. p. 644*]

644 The Holy See may wish to impose a burden on pensions, as it did through the Decree *Cum nuperrimis*, page 403. However, through said Decree, it established that pensions must be reduced or cease altogether, but only in this case: namely, if the revenues of benefices in Italy have been reduced or entirely lost due to the current circumstances. Ibid. Therefore, unless those holding offices can prove, with certain and clear arguments, that their benefices in Italy have suffered such a reduction (not any reduction whatsoever) that they are no longer able to bear all expenses, the full pension must be paid. Ibid. In determining such a reduction in revenues, it is not necessary to consider only the burdens imposed by the government of Italy, but rather the revenues of the benefices must be calculated comprehensively, considering the conditions that existed when the pension was established and the current circumstances. Page 404. Reintegration. In all matters concerning the internal governance of a moral body, specific constitutions approved by ecclesiastical authority create a proper law for that entity, according to which the questions are to be resolved. Page 203. Furthermore, in controversies concerning the distribution of endowments, the provisions of the Holy Congregation, issued by Pope Innocent XI for the good governance and proper administration of the pious institutions of the city of Rome, also apply. Ibid. Although these provisions apply only to the pious institutions of the city, all associations can safely adhere to these laws, which prescribe that the specific constitutions of pious institutions and the wills of testators must be observed. Ibid. It is, therefore, all the more important to adhere to the constitutions if a violation of the rights of a third party should occur. Ibid. Complaints for violation or abuse of constitutions cannot be admitted if the person against whom the complaint is made, having been able to act in a certain way, chose to act otherwise, in order to proceed more safely. Page 204. In some cases, even if the matter concerns odious acts, proof of the fact can be presented through equivalent means, provided that the fact to be proven leaves no room for doubt. Ibid. Renunciation of an office. A renunciation submitted to the proper authority and accepted by a legitimate superior cannot be withdrawn, and the one who resigns from the office will vainly regret it. Page 448. Nowhere in canon law has it been decreed that a cleric is forbidden to send a messenger to his own benefice, disregarding the formalities of the law, and therefore, since it is not expressly prohibited, it should be considered permissible.

Translated by churchlatin.ai, a product of Boyne Archives

Page 449. An act, rendered invalid due to a lack of proper formalities, is validated to the extent that it allows the rehabilitated person to serve for a useful period of time without recourse; so that he is no longer entitled to request restitution, nor to bring an action for nullity. Ibid.

[*Latin ed. p. 645*]

Index generalis 645. A declaration made before the Most Holy Pope, and accepted by him, is valid in any form; because the Pope is presumed to know the laws and to have the regulations in his keeping, page 449. By the law itself, the office of that cleric is immediately vacant, who has presumptuously accepted or retained an office incompatible with his ecclesiastical office; because this is contrary to the Holy Canons, and especially to the Constitution of Innocent III, *De multa*, as well as to that of Trent, Session 7, chapter 4, concerning appeals, ibid. Resolutions. The resolutions of the Holy Congregation of the Council, which contain the true judgment, are retroactively applied to the day the dispute arose; the true judgment is contained when they decide on the matter concerning which the dispute arose, page 331. This applies especially when the resolution has gone to judgment through a clause and further, ibid. Burial. The terms "successors" and "parents," especially with regard to burial rights, must be strictly understood; so that only those who are connected by blood ties, whether by agnatic or cognatic relationship, are included under these names, and not affines, page 354. A deceased person, if he lacks the burial of his ancestors, or if he has not designated a burial place for himself, must be buried in the parish cemetery; because it is presumed that he has conformed to the order of the law, unless he has otherwise stipulated before his death, ibid. Neither parents nor heirs of the deceased have the right to choose, at their own discretion, the burial for the same deceased person, page 355. Marriages. Any question, even concerning marriages, is definitively settled by a double, consistent judgment at a different level of jurisdiction, and becomes a matter of judgment; so that the exception of the closed case arises, and it cannot be further appealed unless a prior request for and grant of full restitution has been obtained, page 230. Stations of the Way of the Cross. It is certain that crosses, and indeed wooden crosses, must be present at each station of the Way of the Cross, although formerly nothing was definitively established as to whether a cross, and specifically a wooden cross, or some other image, should be erected, page 407. It must be held as essential and observed under the penalty of nullity, the single condition for erecting the stations of the Way of the Cross, namely that the cross must necessarily be made of wood, ibid. However, the method devised by modern craftsmen, namely to construct the Way of the Cross from cast iron, is to be completely rejected, because it completely deprives the faithful of

Translated by churchlatin.ai, a product of Boyne Archives

the sight of the wooden cross, ibid.

[*Latin ed. p. 646*]

646 Index generalis. And therefore, only images, whether painted or sculpted, can properly serve as the stations of the Way of the Cross, because, according to several decrees, the blessing falls only upon crosses themselves; and the essence of this sacred journey consists in the wood from which it is made, because the Cross of Christ was made of wood, page 407. Vicar Capitular. It is doubted whether a Vicar Capitular possesses the authority to properly erect pious sodalities, to aggregate them, and to approve their statutes; although no one doubts that he acts as Vicar General; while the former exercises jurisdiction at the behest of the Bishop, the latter cannot be revoked by the Chapter and may obtain the ordinary power of the Bishop, page 360. The Sacred Congregation for Indulgences, in a variety of opinions, refused to define, by its own judgment, whether a Vicar Capitular, in the manner of a Bishop, has the power to carry out those things that pertain to the erection, aggregation, and approval of statutes of confraternities, ibid. Nevertheless, with prudent counsel, it was decided that Vicars Capitulars should abstain from carrying out these things; because, as it seems to us, the erection of confraternities is a matter of the greatest importance in the governance of the diocese, which, however, can easily be postponed until the future successor of the Bishop, ibid. General Vicar. According to the Council of Trent, Session 24, chapter 16, a General Vicar should be chosen who is at least a doctor or licentiate in Canon Law, or otherwise, as far as possible, suitable, page 96. A parish priest who has care of souls cannot be chosen as a General Vicar; because the offices of a General Vicar and a parish priest are generally incompatible in the same person, ibid. Neither can one who is native to the same city or diocese be appointed as a General Vicar, due to consanguinity, affinity, and familiarity, by which he might be led astray from proper justice, and render himself suspect to the parties involved, ibid.

Translated by churchlatin.ai, a product of Boyne Archives